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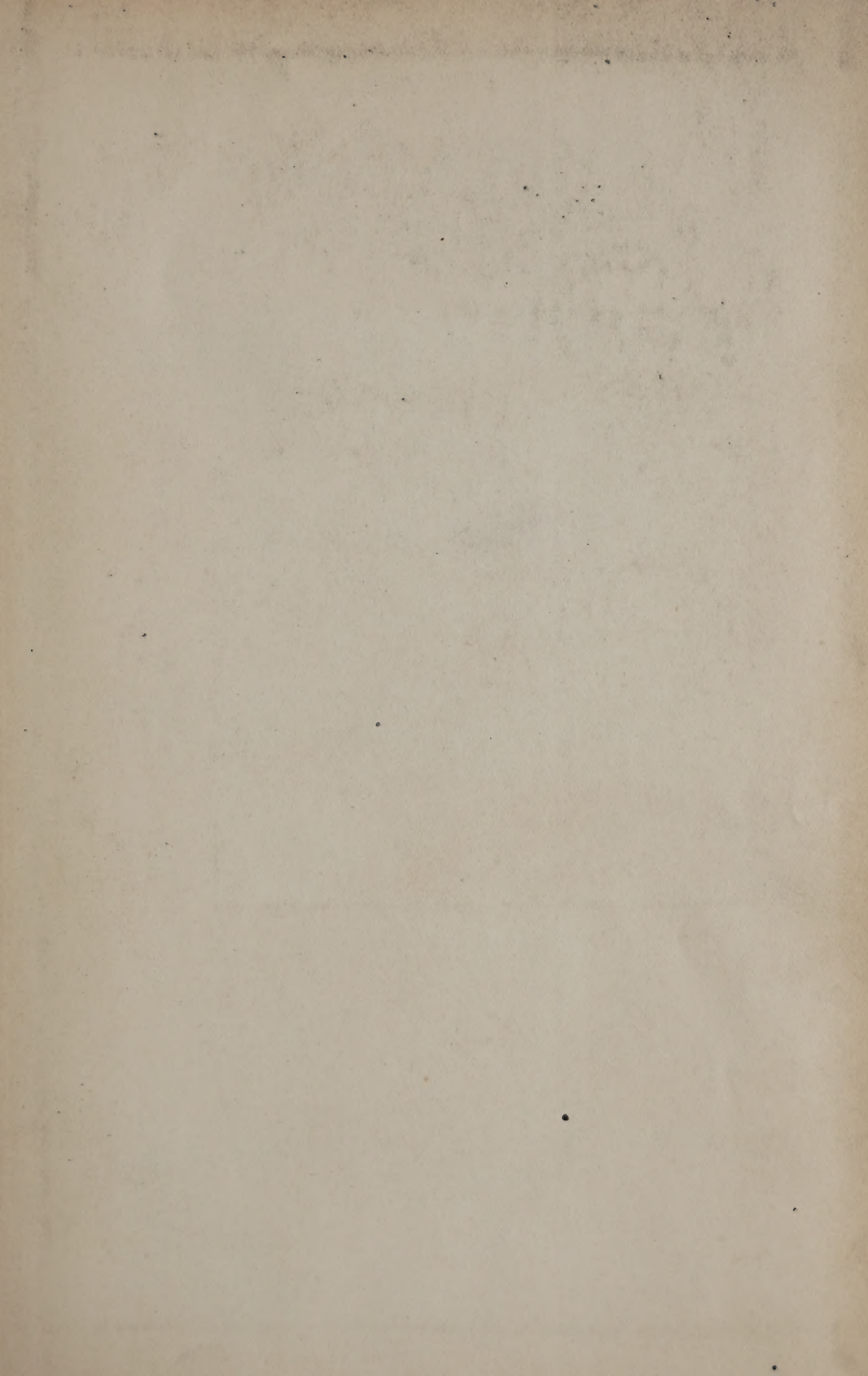


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The City of Boston,
Jan 30, 1877.



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ORDINANCES
AND
RULES AND ORDERS
OF THE
CITY OF BOSTON.

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TOGETHER WITH A
DIGEST OF THE GENERAL AND SPECIAL STATUTES OF
THE MASSACHUSETTS LEGISLATURE RELATING
TO THE CITY.

PUBLISHED BY ORDER OF THE CITY COUNCIL.

BOSTON:
ROCKWELL AND CHURCHILL, CITY PRINTERS,
No. 39 ARCH STREET.
1876.

210.188

The City of Boston,
Jan, 30. 77.

CITY OF BOSTON.

IN BOARD OF ALDERMEN, June 12, 1876.

Ordered, That the Committee on Ordinances be authorized to procure a revision of the Ordinances of the City of Boston and the Acts of the Legislature, relating to municipal subjects; the expense attending the same, not exceeding the sum of two thousand dollars, to be transferred for that purpose from the Reserved Fund.

Passed. Yeas, 11; Nays, none. Sent down for concurrence. June 15, came up concurred. Yeas, 53; Nays, none.

Approved by the Mayor, June 16, 1876.

A true copy.

Attest:

S. F. McCLEARY,

City Clerk.

6351.92

CITY OF BOSTON.

IN BOARD OF ALDERMEN, December 4, 1876.

The Joint Standing Committee on Ordinances, who were authorized by an order of the City Council, approved June 16, 1876, to prepare a revision of the ordinances of the city, beg leave to submit the accompanying volume of statutes and ordinances, and they would respectfully recommend the passage of the ordinance contained in said volume declaring these revised ordinances to be the ordinances of the city, and also of the order declaring the rules and orders contained in said volume to be the rules and orders of the Board of Aldermen. The work of revising the ordinances and preparing the other matter contained in the accompanying volume has been performed by James M. Bugbee, formerly Clerk of Committees, whose familiarity with the subject especially qualified him for the task. In the preparation of the present work, the plan adopted in previous editions, with which the members of the City Government and citizens are familiar, has been substantially followed, and the intention has been to make no changes in the ordinances or rules and regulations, except such as were necessary to make them consistent with each other, and with the requirements of the statutes which have been passed since the revision of 1869. In order to save space, the head-notes to the different subjects have been omitted; most of the historical notes contained in the previous edition have been rewritten; many new ones have been introduced, and the references to judicial decisions have been greatly enlarged.

THOMAS J. WHIDDEN,
ABRAHAM O. BIGELOW,
HUGH O'BRIEN,
URIEL H. CROCKER,
OTIS H. PIERCE,
JAMES A. LAPPEN,
BENJAMIN H. TICKNOR,
GEORGE L. RUFFIN,

Committee on Ordinances.

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STATUTES AND ORDINANCES.

CONSTITUTIONAL PROVISIONS

IN RELATION TO

CITY GOVERNMENTS.

ART II. OF AMENDMENTS.

The general court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards or otherwise for the election of officers under the constitution, and the manner of returning the votes given at such meetings: provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent, and on the application, of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose; and provided, also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the general court. [Adopted in 1821.]

Powers of general court to organize city governments.
1 Pick. 375.
112 Mass. 200.
114 Mass. 214.

NOTE. — The establishment of the town of Boston dates from the passage of the order of the Court of Assistants on the 17th September (7th, O.S.), 1630, "that Trimountain shall be called Boston." The first city government was organized on the 1st of May, 1822 (St. 1821, c. 110). Roxbury was first recognized by the Court of Assistants as a town on the 8th Oct., 1630. It was incorporated as a city on the 12th March, 1846 (1846, c. 95), and annexed to Boston (*i.e.*, act accepted by the qualified voters of the two cities) 9th Sept., 1867 (St. 1867, c. 359). Dorchester was named by the Court of Assistants in the same order in which Boston was named; and it retained its town organization until annexed to Boston on the 22d June, 1869 (St. 1869, c. 349). Charlestown was founded 4th July, 1629; incorporated as a city in 1847 (St. 1847, c. 29); annexed to Boston, 7th Oct., 1873 (St. 1873, c. 286). West Roxbury was incorporated as a town on the 24th March, 1851 (St. 1851, c. 250); annexed to Boston, 7th of Oct., 1873 (St. 1873, c. 314). Brighton was incorporated as a town in 1806 (St. 1806, c. 65); annexed to Boston on the 7th Oct., 1873 (St. 1873, c. 303).

CITY CHARTER.¹

Corporate
powers.

1821, c. 110, § 1.

1 Pick. 375.

1 Met. 473.

SECTION 1. The inhabitants of the city of Boston, for all the purposes for which towns and cities are by law incorporated in this commonwealth, shall continue to be one body politic, in fact and in name, under the style and denomination of The City of Boston; and, as such, shall have, exercise, and enjoy all the rights, immunities, powers and privileges, and shall be subject to all the duties and obligations now incumbent upon and appertaining to said city, as a municipal corporation.

City govern-
ment.

1821, c. 110, § 1.

1875, c. 243.

SECT. 2. The administration of all the fiscal, prudential, and municipal concerns of said city, with the conduct and government thereof, shall be vested in one principal officer, to be styled the mayor, one council of twelve persons, to be called the board of aldermen, and one council of forty-eight² persons, to be called the common council, which boards, in their joint capacity, shall be denominated the city council, and also in such other boards of officers as are hereinafter specified.

Division into
twelve wards.

1821, c. 110, § 2.

1850, c. 167, § 1.

G. S. c. 8, § 5.

1865, c. 7.

1875, c. 243.

1876, c. 242.

[SECT. 3. It shall be the duty of the city council, and they are empowered during the year 1860, and whenever thereafterwards they may deem it expedient, not oftener than once in ten years, to cause a new division of the city to be made into twelve wards, in such a manner as to include an equal number of voters in each ward, as nearly as conveniently may be, consistently with well-

¹ The first act of the legislature of Massachusetts establishing the city of Boston was passed February 23, 1822, and adopted by the citizens of Boston March 4, 1822. It is chapter 110 of the acts of 1821. The present city charter, being a revision of the former one, was passed April 29, 1854, and adopted by the citizens November 13, 1854. It is chapter 448 of the acts of 1854. Since then the powers and duties of the city government have been altered or enlarged in many respects by general and special legislation; but as the extent of the changes cannot in some cases be clearly defined, the act of 1854 is here given in its original form, and the amendments or modifications which have been made, either directly or indirectly, by subsequent legislation are indicated in the foot-notes.

² By St. 1875, c. 243, the number was increased to *seventy-two*.

defined limits to each ward; and, until such division be made, the boundary lines of the wards shall remain as now established.^{1]} 1875, c. 242.

SECT. 4. The annual meeting of citizens, for the election of municipal officers hereinafter mentioned, shall be held on the second Monday² of December, and the citizens of said city qualified to vote in city affairs shall for the purpose of such election then meet together within the wards in which they respectively reside, at such hour and place as the board of aldermen may by their warrant direct and appoint; and the person receiving the highest number of votes for any office shall be deemed and declared to be elected to such office; and, whenever two or more persons are to be elected to the same office, the several persons, to the number required to be chosen, having the highest number of votes, shall be declared elected.

SECT. 5. Every person so chosen in any ward shall, within forty-eight hours of his election, be furnished by the clerk with a certificate thereof, signed by the warden, clerk, and a majority of inspectors, which certificate shall be presumptive evidence of the title of such person to the office therein mentioned.

SECT. 6. The municipal officers to be chosen at the annual election shall enter upon the duties of their respective offices on the first Monday of January.

[SECT. 7. ³ The qualified voters of said city shall, at the annual

¹ The Gen. Sts., c. 8, § 5 (revision of 1860), provided that no new division of wards should be made in the city of Boston previous to the appointment of senators and representatives in the year 1865. St. 1865, c. 7, provided that the cities of the commonwealth should in that year and in every tenth year thereafter make a new division of their wards. A new division of the wards in Boston was accordingly made in 1865, in the manner provided in § 3 of the charter. Under the authority of St. 1875, c. 243, the city was divided, in 1875, into *twenty-four* wards. By St. 1876, c. 242, Ward 22 was divided into two wards, one being numbered *twenty-five*; and said two wards were authorized to elect alternately one and two members of the common council.

² By St. 1872, c. 140 (accepted by the city council 7th June, 1872), and by St. 1874, c. 376, § 53, the municipal election is now held on the *Tuesday after* the second Monday.

³ By St. 1876, c. 246, §§ 7, 8, 9, 10, 11, 12, 13 and 14 of the charter were repealed; the mayor was authorized, with the approval of the aldermen, to appoint three inspectors of elections in each ward, and the qualified voters were authorized to elect annually a warden, clerk and three inspectors in each ward to act with the persons so appointed. See "Wards and Ward Officers," *post*.

Annual meeting for the election of city officers.

1824, c. 49.

1851, c. 167.

1854, c. 39.

1872, c. 140.

G. S. c. 7.

Certificates of election to be furnished.

1867, c. 240.

Commencement of municipal year.

1824, c. 49, § 2.

Election of

ward officers.
1876, c. 246.

meeting, choose by ballot one warden and one clerk, and five inspectors of elections for each ward, who shall be resident in said ward, and who shall hold their offices for one year and until others shall be chosen and qualified in their stead.]

Ward officers to
be sworn.
1821, c. 110, § 3.
1876, c. 246.

[SECT. 8. The ward officers mentioned in the preceding section shall respectively make oath faithfully and impartially to discharge their several duties, which oath may be administered by the clerk of such ward to the warden, and by the latter to the clerk and inspectors, or to all of said officers by any justice of the peace for the county of Suffolk; and a certificate thereof shall be entered in the record, to be kept by the clerk of the ward.]

Non-election of
ward officers.
1876, c. 246.

[SECT. 9. In case of the non-election of any ward officer at the annual meeting, adjournments may be had for the purpose of effecting such election, in the same manner as is hereinafter provided with regard to the election of members of the common council.]

Absence of
ward officers.
1821, c. 110, § 3.
1845, c. 217, § 3.
1876, c. 246.

[SECT. 10. In case of the absence of any ward officer, at any ward meeting, such officer may be chosen, *pro tempore*, by hand vote, and shall have all the powers, and be subject to all the duties of the regular officer at such meeting.]

Power and duty
of warden.
1876, c. 246.

[SECT. 11. It shall be the duty of the warden to preside at all ward meetings, with the powers of moderators of town meetings. In case of his absence, the clerk, and, in case of the absence of the clerk, any inspector, shall preside, according to seniority, until a warden shall be chosen, as provided in the preceding section.]

Duties of ward
clerk.
1821, c. 110, § 3.
1876, c. 246.

[SECT. 12. It shall be the duty of the clerk to make a fair and true record, and to keep an exact journal of all the acts and votes of citizens at the ward meetings, and to deliver over such records and journals, together with other documents and papers held by him in his said capacity, to his successor in office.]

Duties of war-
den and inspec-
tors.

1821, c. 110, § 3.
1876, c. 246.

[SECT. 13. It shall be the duty of the warden and inspectors of each ward to receive, sort, and count, and of the warden to declare, all votes at any election within such ward.]

Duties of ward
officers at all
elections.

1845, c. 217, § 3.
1876, c. 246.

[SECT. 14. It shall be the duty of all ward officers, authorized to preside and act at elections of city officers, to attend and perform their respective duties at the times and places appointed for elections of any officers, whether of the United States, state, city, or wards, and to make and sign the regular returns of the same.]

SECT. 15. The qualified voters of said city shall, at the annual meeting, be called upon to give in their votes for one able and discreet person, being an inhabitant of the city, to be mayor of said city for the term of one year. All the ballots so given in, in each ward, being sorted, counted, and declared, shall be recorded at large by the clerk in open ward meeting; and, in making such declaration and record, the whole number of votes or ballots given in shall be distinctly stated, together with the name of every person voted for, and the number of votes given for each person respectively, such numbers to be expressed in words at length; and a transcript of such record, certified and authenticated by the warden, clerk, and a majority of the inspectors of elections for each ward, shall forthwith be transmitted or delivered by such ward clerk to the clerk of the city. It shall be the duty of the city clerk forthwith to enter such returns, or a plain intelligible abstract of them, as they are successively received, upon the journal of the proceedings of the board of aldermen, or some other book to be kept for that purpose.¹

Election of
mayor.
1821, c. 110, § 5.

See G. S. c. 7,
§ 14.

SECT. 16. The board of aldermen shall, as soon as conveniently may be, within three days of such election, meet together and examine all the said returns, and they shall cause the person who may have been elected mayor to be notified in writing of his election; but, if it shall appear by said returns that no person has been elected, or if the person elected shall refuse to accept the office, the board shall issue their warrants for a new election, and the same proceedings shall be had as are provided in the preceding section for the choice of a mayor, and repeated from time to time until a mayor shall be chosen.¹

Board of aldermen to examine
returns of votes
for mayor.
1821, c. 110, § 5.
1830, c. 7, § 2.
1876, c. 188, § 5.

SECT. 17. Whenever, on examination by the board of aldermen of the returns of votes given for mayor at the meetings of the wards, holden for the purpose of electing that officer, last preceding the first Monday of January in each year, no person shall appear to be chosen, the board of aldermen, by whom such examination is made, shall make a record of that fact, an attested copy of which record it shall be the duty of the city clerk to produce and read, on the first Monday of January, in the presence of the members returned to serve as aldermen and common councilmen;

Proceedings in
case of no choice
of mayor before
the commence-
ment of the
municipal year.
1839, c. 7, § 1.

¹ See "Elections," *post*, p. 246.

1830, c. 7, § 1.

and the oaths prescribed by law may be administered to the members elect. The members of the board of aldermen shall thereupon proceed to elect a chairman, and the common council a president, in their respective chambers; and being respectively organized, they shall proceed to business in the manner hereinafter provided, in case of the absence of the mayor; and the board of aldermen shall forthwith issue their warrants for meetings of the citizens of the respective wards, for the choice of a mayor, at such time and place as they shall judge most convenient; and the same proceedings shall be had in all respects as are hereinbefore directed, and shall be repeated from time to time, until a mayor shall be duly chosen.

Proceedings in case no mayor is chosen or a full board of aldermen is not elected.

1845, c. 217, § 1.

SECT. 18. Whenever it shall appear, by the regular returns of the elections of city officers, that a mayor has not been chosen, or that a full board of aldermen has not been elected, such of the board of aldermen, whether they constitute a quorum or not, as may have been chosen, shall issue their warrant, in the usual form for the election of a mayor, or such members of the board of aldermen as may be necessary; and the same proceedings shall be had and repeated, until the election of a mayor and aldermen shall be completed, and all vacancies shall be filled in the said board; and, in case neither a mayor nor any alderman shall be elected at the usual time for electing the same, and after the powers of the former mayor and aldermen shall have ceased, it shall be the duty of the president of the common council to issue his warrant, in the same manner as the board of aldermen would have done, if elected, and the same proceedings shall be had and repeated, until a mayor or one or more aldermen shall be elected.

Election of aldermen.

1821, c. 110, § 6.

SECT. 19. The qualified voters of said city shall, at the annual meeting, be called upon to give in their votes for twelve persons, being inhabitants of said city, to constitute the board of aldermen for the ensuing year, and all the votes so given, being sorted, counted, and declared by the warden and inspectors, shall be recorded at large by the clerk in open ward meeting; and in making such declaration and record, the whole number of votes or ballots given in shall be particularly stated, together with the name of every person voted for, and the number of votes given for each person; and a transcript of such record, certified by the warden

and clerk and a majority of the inspectors of each ward, shall forthwith be transmitted to the city clerk, whereupon the same proceedings shall be had to ascertain and determine the persons chosen as aldermen, as are hereinbefore directed in regard to the choice of mayor, and for a new election in case of the whole number required not being chosen at the first election. And each alderman so chosen shall be duly notified in writing of his election, by the mayor or aldermen for the time being.

[SECT. 20. ¹The qualified voters of each ward shall, at the annual election, be called upon to give in their votes for four able and discreet men, being inhabitants of the ward, to be members of the common council for the ensuing year; and all the ballots so given in, in each ward, being sorted, counted, and declared, a public declaration of the result shall be made by the warden in open ward meeting; and a record of such proceedings shall be

See G. S. c. 7,
§ 14.

Election of com-
mon council-
men.

1821, c. 110, § 7.
1875, c. 243.
1876, c. 242.

¹ By St. 1875, c. 243 (amended by St. 1876, c. 225, § 8), Section 20 of the charter was repealed and it was provided (§ 2) that, "At the municipal election in the year eighteen hundred and seventy-five, and every year thereafter, the qualified voters of each ward shall bring in their votes for three able and discreet men, qualified voters and inhabitants in said ward, to be members of the common council for the ensuing year; and all the ballots so given in each ward, being sorted, counted and declared, a public declaration of the result shall be made by the warden in open ward meeting; and a record of such proceedings shall be kept by the clerk in his journal, stating the number of ballots given for each person, written in words at length."

By St. 1876, c. 242, the city council was directed to divide ward 22 into two wards (one to be numbered "25") and the election of members of the common council from the wards so constituted was defined as follows:—

"SECT. 3. At the municipal election next succeeding such division, the qualified voters of said new ward twenty-two shall carry in their votes for two able and discreet men, qualified voters and inhabitants in said ward, to be members of the common council for the ensuing year, and at said election the qualified voters of said new ward twenty-five shall carry in their votes for one able and discreet man, a qualified voter and inhabitant in said ward, to be a member of the council for the ensuing year. At the municipal election next succeeding, said new ward twenty-two shall be entitled to elect one, and said new ward twenty-five two members in the manner aforesaid and qualified as aforesaid, and said wards shall thereafter alternately elect one and two members of the common council as hereinbefore set forth. Elections shall be conducted and records thereof kept in the manner provided in section two of chapter two hundred and forty three of the acts of the year eighteen hundred and seventy-five." See "Wards and Ward Officers," *post*, p. 864.

1876, c. 242.

kept by the clerk in his journal, stating particularly the whole number of ballots given in, the number necessary to make a choice, the number actually given for each person, the whole to be written in words at length.]

Proceedings in case there is no choice of common councilmen.

1875, c. 243.

City Doc. 12, of 1867.

SECT. 21. In case [four] persons are not chosen at the first balloting in any ward, the meeting of such ward shall be adjourned by the presiding officer, for the purpose of filling such vacancies, to a period not less than twenty-four nor more than seventy-two hours distant from the hour when the polls were opened at the first balloting, the time of adjournment within such limits to be determined by the warden, with the consent of a majority of the inspectors who may be present when such adjournment is had; and such notice shall be given of the time of such adjournment, and the time the polls will be kept open, as the warden may direct; and at such adjourned meeting a balloting shall be opened for a number of common councilmen sufficient to complete the number of [four], which shall be conducted, and its results be declared and recorded, in the same manner as before prescribed for the first balloting.

Same subject.

SECT. 22. In case there shall still be vacancies in the number of common councilmen in any ward, adjournments of the meetings of the citizens thereof, for the purpose of filling the same, shall continue to be had in the same manner, to periods not less than twenty-four nor more than seventy-two hours distant from each other, at all of which the balloting shall be conducted, and the result be declared and recorded in the same manner as before prescribed, until the number of four shall be duly chosen. And at all such adjournments the polls shall be kept open the same number of hours as are required by the original warrant.

Same subject.

SECT. 23. If, at the close of the last legally adjourned meeting of any ward as aforesaid, preceding the first Monday in January, there shall still be vacancies in the number of common councilmen for any ward, no further adjournment shall be had; but a record of the fact, and of the number of such vacancies, shall be made

¹ St. 1875, c. 243, provided for the election of *three* members of the common council from each ward. St. 1876, c. 242, provided for the division of Ward 22 into two wards, and for the election alternately of one and two members of the council from each of said wards. See note on preceding page.

by the clerk of the ward in his journal, signed therein by the warden, clerk, and a majority of the inspectors, an attested copy of which record shall forthwith be delivered by the clerk of the ward to the city clerk, who shall lay the same before the common council at their first meeting in January. 1875, c. 243.

SECT. 24. The board of aldermen, the common council, and the school committee, shall have authority to decide upon all questions relative to the qualifications, elections, and returns of their respective members. Board of aldermen, etc., to judge of elections.
1821, c. 110, § 7.
1875, c. 241.

SECT. 25. Whenever it shall appear to the board of aldermen that there is a vacancy, by removal from the city, or by death, resignation, or otherwise, in the board of aldermen, the common council, [the school committee¹], or in any of the city and ward offices, it shall be the duty of said board to issue their warrant in due form to fill all such vacancies in each and all of said boards and offices, at such time and place as they may deem advisable; and the same proceedings shall be had, and adjournments, if necessary, within the same limits as are herein prescribed for the annual meeting for the election of common councilmen. But, in case of vacancies in the common council [and school committee¹] such warrant shall not be issued until the board of aldermen receive official information thereof. Vacancies in city or ward officers.
1845, c. 217, § 2.
G. S. c. 38, § 17.

SECT. 26. All city and ward officers shall be held to discharge the duties of the offices to which they have been respectively elected, notwithstanding their removal after their election out of their respective wards into any other wards of the city. But they shall not be so held after they have taken up their permanent residence out of the city. Removal of city or ward officers from their wards.
1845, c. 217, § 5.

SECT. 27. The mayor, aldermen, and common councilmen, on the first Monday in January, or before entering on the duties of their offices, shall respectively be sworn, by taking the oath of allegiance and oath of office prescribed in the constitution of this commonwealth, and an oath to support the constitution of the United States. And such oaths may be administered to the mayor elect, by any one of the justices of the supreme judicial court, or any judge of any court of record, commissioned to hold any such Organization of city council.
1821, c. 110, § 9.
1824, c. 40, § 2.

¹ By Gen. St., c. 38, § 17, vacancies in the school committee are filled by the school committee and board of aldermen in convention.

1824, c. 49, § 2.

Oath of office.

court within the said city, or by any justice of the peace for the county of Suffolk. And such oaths shall be administered to the aldermen and members of the common council by the mayor, being himself first sworn as aforesaid, or by either of the persons authorized to administer said oath to the mayor; and a certificate of such oaths having been taken shall be entered in the journal of the mayor and aldermen and of the common council respectively, by their respective clerks.

Absence of
mayor elect.
1830, c. 7, § 2.

SECT. 28. In case of the unavoidable absence, on account of sickness or otherwise, of the mayor elect, on the first Monday in January, the city government shall organize itself in the mode hereinbefore provided in cases wherein no person shall have been elected mayor at the meeting last preceding the first Monday in January, and may proceed to business in the same manner as if the mayor were present.

Aldermen to
choose a perma-
nent chairman.

SECT. 29. After the organization of the city government, and the qualification of a mayor, and when a quorum of the board of aldermen shall be present, said board, the mayor presiding, shall proceed to choose a permanent chairman,¹ who shall preside at all meetings of the board and at conventions of the two branches, in the absence of the mayor; and, in case of any vacancy in the office of mayor for any cause, he shall exercise all the powers and perform all the duties of the office as long as such vacancy shall continue. But he shall continue to have a vote in the board, and shall not have the veto power.

City clerk.
1821, c. 110, § 10.
1869, c. 32.

SECT. 30. The mayor, aldermen, and common council in convention, in the month of January, shall choose a clerk for the term of one year, and until another person is duly chosen and qualified in his stead, who shall be sworn to the faithful discharge of the duties of his office, and shall be removable at the pleasure of the board of aldermen, the mayor thereto consenting. He shall be denominated the city clerk, and it shall be his duty to keep a journal of the acts and proceedings of the board of aldermen, to sign all warrants issued by them, and to do such other acts in his said capacity as may lawfully and reasonably be required of him; and

¹ It is the opinion of the city solicitor that St. 1876, c. 193, § 2, does not require that the title of *president* should be given to the presiding officer of the board of aldermen of Boston.

to deliver over all journals, books, papers, and documents intrusted to him as such clerk to his successor in office, immediately upon such successor being chosen and qualified as aforesaid, or whenever he may be thereunto required by the aldermen. The city clerk thus chosen and qualified shall continue to have all the powers and perform all the duties now by law belonging to him.

SECT. 31. In case of a vacancy in the office of city clerk, from any cause, the same shall be filled in the manner provided in the preceding section.

SECT. 32. In case of the temporary absence of the city clerk, the mayor, by and with the advice and consent of the board of aldermen, may appoint a city clerk *pro tempore*.¹

SECT. 33. The administration of police, together with the executive powers of the said corporation generally, and all the powers formerly vested in the selectmen of the town of Boston, either by the general laws of this commonwealth, by particular laws relative to the powers and duties of said selectmen, or by the usages, votes, or by-laws of said town, and all the powers subsequently vested in the mayor and aldermen of said city as county commissioners² or otherwise, shall be, and hereby are, vested in the board of aldermen, as hereby constituted, as fully and amply as if the same were herein specially enumerated. A majority of the members of the board shall constitute a quorum for the transaction of business. Their meetings shall be public, and the mayor, if present, shall preside, but without a vote.

SECT. 34. The persons so chosen and qualified as members of the common council of the said city shall sit and act together as a separate body, distinct from that of the board of aldermen, except in those cases in which the two bodies are to meet in convention; and the said council shall have power from time to time to choose one of their own members to preside over their deliberations and to preserve order therein, and also to choose a clerk, who shall be under oath faithfully to discharge the duties of his office, who shall hold such office during the pleasure of said council, and whose

1869, c. 32.

Vacancy in
office of city
clerk.Absence of city
clerk.
1869, c. 32.Powers and
duties of board
of aldermen.
1804, c. 73.
1821, c. 110, § 13.
1852, c. 266.G. S. c. 17, § 33.
G. S. c. 19, § 17.
G. S. c. 43, § 77.
1870, c. 337.Common coun-
cil a separate
body.
1821, c. 110, § 11.President.
Clerk.

¹ For authority to appoint an assistant city clerk, see St. 1869, c. 32. See also *city clerk, post*, p. 199.

² By St. 1870, c. 337, the powers formerly exercised by the board of aldermen relative to laying out, widening and discontinuing streets and the abatement of taxes were vested in a board of three commissioners to be elected by the citizens.

1821, c. 110, § 11. duty it shall be to attend said council, when the same is in session,
 Sittings to be public. to keep a journal of its acts, votes, and proceedings, and to perform
 Quorum. such other services, in said capacity, as said council may require.
 1867, c. 359. All sittings of the common council shall be public; and a majority
 1869, c. 349. of all the members of the common council shall constitute a quorum
 1872, c. 15. for the transaction of business.

Powers of city council. SECT. 35. All other powers heretofore by law vested in the
 1821, c. 110, § 15. town of Boston, or in the inhabitants thereof as a municipal cor-
 1847, c. 262. poration, or in the city council of the city of Boston, shall be and
 1851, c. 337. hereby are continued to be vested in the mayor, aldermen, and
 common council of the said city, to be exercised by concurrent
 vote, each board as hereby constituted having a negative upon the
 proceedings of the other, and the mayor having a veto power as
 hereinafter provided. More especially, they shall have power to
 make all such needful and salutary by-laws or ordinances, not in-
 consistent with the laws of this commonwealth, as towns by the
 laws of this commonwealth have power to make and establish, and
 to annex penalties not exceeding fifty dollars for the breach
 thereof; which by-laws and ordinances shall take effect and be in
 force from and after the time therein respectively limited,¹ without
 the sanction or confirmation of any court or other authority what-
 soever.

By-laws.
 Assessment of taxes. SECT. 36. The city council shall also have power from time to
 1821, c. 111, § 15. time to lay and assess taxes for all purposes for which towns are
 by law required or authorized to assess and grant money, and also
 for all purposes for which county taxes may be levied and assessed,
 so long as other towns in the county shall not be liable to taxation
 for county purposes. But, in the assessment and apportionment
 of all such taxes upon the polls and estates of all persons liable
 to contribute thereto, the same rules and regulations shall be ob-
 served as are now established by the laws of this commonwealth,
 or may be hereafter enacted, relative to the assessment and appor-
 tionment of town taxes.

Collection of taxes. SECT. 37. The said city council shall also have power to pro-
 1821, c. 110, § 15. vide for the assessment and collection of such taxes; and to make

¹ If no time is named, and there is nothing to show that it was not in-
 tended to take effect immediately, the ordinance takes effect from its passage.
 109 Mass. 355.

appropriations of all public moneys, and provide for the disbursement thereof, and take suitable measures to insure a just and prompt account thereof; and for these purposes may either elect such assessors and assistant assessors as may be needful, or provide for the appointment or election of the same or any of them by the mayor and aldermen, or by the citizens, as in their judgment may be most conducive to the public good;¹ and may also require of all persons entrusted with the collection, custody or disbursement of public moneys, such bonds, with such conditions and such sureties, as the case may in their judgment require.

1821, c. 110, § 15.

Assessors to be chosen.

Bond, etc., may be required.

SECT. 38. The city council may provide for the appointment or election of all necessary officers for the good government of said city, not otherwise provided for, and may prescribe their duties and fix their compensation; and may choose a register of deeds whenever the city shall be one county.

City council may provide for the appointment of city officers.

Ibid. § 16.

Register of deeds.

SECT. 39. The city council shall have the care and superintendence of the public buildings, and the care, custody, and management of all property of the city, with power to lease or sell the same, except the common and Faneuil hall. And the said city council shall have power to purchase property, real or personal, in the name and for the use of the city, whenever its interest or convenience may in their judgment require it.

Care and custody of city property.

Ibid.

Power to purchase property.

SECT. 40. All the power and authority now by law vested in the city council, or in the board of mayor and aldermen, relative to the public health and the quarantine of vessels, shall continue to be vested in the city council, to be carried into execution by the appointment of one or more health commissioners; or in such other manner as the health, cleanliness, comfort, and order of the city may, in their judgment, require, subject to such alterations as the legislature may from time to time adopt. The powers and duties above named may be exercised and carried into effect by the city council in any manner which they may prescribe, or through the agency of any persons to whom they may delegate the same, notwithstanding a personal exercise of the same, collectively or individually, is prescribed by previous legislation; and the city council may constitute either branch, or any committee of their

Board of health.

1821, c. 110, § 17.

1840, c. 211, § 1.

12 Pick. 134.

¹ Assessors elected by concurrent vote of the city council. See "Taxes," *post*, p. 856.

1840, c. 211, § 1. number, whether joint or separate, the board of health, for all or for particular purposes.¹

Surveyors of highways. 1823, c. 2. **SECT. 41.** The board of aldermen shall be surveyors of highways for said city.

City treasurer. 1821, c. 110, § 18. **[SECT. 42.²** The city council shall, in the month of May, meet together in convention, and elect a suitable person to be the treasurer of said city, who shall also be county treasurer; and who shall hold his office until his successor is chosen and qualified in his stead.]

Members of city council ineligible to other offices. 1821, c. 110, § 21. 1851, c. 70. **SECT. 43.** No person shall be eligible to any office, the salary of which is payable out of the city treasury, who, at the time of his appointment, shall be a member of either the board of aldermen or the common council; and neither the mayor nor any alderman or member of the common council shall, at the same time, hold any office of emolument under the city government.

Representatives to general court. 1821, c. 110, § 22. 1831, c. 38. **[SECT. 44.** In the month of October in each year, the city government shall meet in convention and determine the number of representatives which it may be expedient for the corporation to send to the general court in the ensuing year, within its constitutional limits, and to publish such determination, which shall be conclusive; and the number thus determined shall be specified in the warrant calling a meeting for the election of representatives.³]

Compensation of the mayor. 1821, c. 110, § 12. 108 Mass. 203. 112 Mass. 512. **SECT. 45.** The mayor of the city, chosen and qualified as hereinbefore provided, shall be taken and deemed to be the chief executive officer of said corporation; and he shall be compensated for his services by a salary, to be fixed by the board of aldermen and common council in convention assembled, payable at stated periods, which salary shall not exceed the sum of five thousand dollars⁴ annually, and he shall receive no other compensation or emolument whatever; and no regulations enlarging or diminishing

¹ A board of health has been established by ordinance, consisting of three persons appointed by the mayor with the approval of the city council. See "Health," *post*, p. 405.

² By St. 1875, c. 176, the city treasurer is to be elected by concurrent vote, and provision is made for the election of a collector of taxes.

³ The twenty-first article of amendment to the constitution of the State, ratified in May, 1857, changed the system of representation. See "Elections," *post*, p. 253.

⁴ Salary fixed at \$5,000 by convention held Nov. 21st, 1864.

such compensation shall be made, to take effect until the expiration of the year for which the mayor then in office shall have been elected, and said salary, when fixed, shall continue until changed by the city council as aforesaid.

SECT. 46. It shall be the duty of the mayor to be vigilant and active at all times in causing the laws for the government of said city to be duly executed and put in force, to inspect the conduct of all subordinate officers in the government thereof, and, as far as may be in his power, to cause all negligence, carelessness, and positive violation of duty, to be duly prosecuted and punished. He shall have power, whenever in his judgment the good of said city may require it, to summon meetings of the board of aldermen and common council, or either of them, although the meetings of said boards may stand adjourned to a more distant day, and shall cause suitable notice in writing of such meetings to be given to the respective members of said boards. And he shall from time to time communicate to both branches of the city council all such information, and recommend all such measures, as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort, and ornament of the said city.

SECT. 47. Every ordinance, order, resolution, or vote to which the concurrence of the board of aldermen and of the common council may be necessary (except on a question of convention of the two branches), and every order of either branch, involving the expenditure of money, shall be presented to the mayor; if he approve thereof, he shall signify his approbation by signing the same; but, if not, he shall return the same, with his objections, to the branch in which it originated, who shall enter the objections of the mayor at large on their records, and proceed to reconsider said ordinance, order, resolution, or vote; and if, after such reconsideration, two-thirds¹ of the board of aldermen or common council, notwithstanding such objections, agree to pass the same, it shall, together with the objections, be sent to the other branch of the city council (if it originally required concurrent action), where it shall also be reconsidered, and if approved by two-thirds¹

His powers and duties.

1821, c. 110, § 12.

5 Gray, 121.

98 Mass. 39.

Veto power of the mayor.

1854, c. 448, § 47.

¹ It is the opinion of the city solicitor that St. 1876, c. 193, § 1, so far modifies § 47 of the charter as to require the affirmative action of two-thirds of the members in each branch *present and voting* to override the mayor's veto.

1854, c. 448, § 47. of the members present, it shall be in force; but in all cases the vote shall be determined by yeas and nays; and if such ordinance, order, resolution or vote, shall not be returned by the mayor within ten days after it shall have been presented, the same shall be in force. But the veto power of the mayor shall not extend to the election of officers required by any law or ordinance to be chosen by the city council in convention or by concurrent action, unless expressly so provided therein.

Same subject.

G. S. c. 19, § 17.

SECT. 48. In all cases where anything is or may be required or authorized by any law or ordinance to be done by the mayor and aldermen, the board of aldermen shall first act thereon; and any order, resolution, or vote of said board shall be presented to the mayor for his approval, and the same proceedings shall be had as are provided in the preceding section.¹

Mayor to
appoint officers
by consent of
aldermen.

1821, c. 110, § 21.

G. S. c. 19, § 17.

SECT. 49. In all cases wherein appointments to office are directed to be made by the mayor and aldermen, they shall be made by the mayor, by and with the advice and consent of the aldermen, and such officers may be removed by the mayor.²

Vacancy in the
office of mayor.

1821, c. 110, § 5.

SECT. 50. In the case of the decease, inability, absence, or resignation of the mayor, and whenever there is a vacancy in the office from any cause, and the same being declared, and a vote passed by the aldermen and common council respectively, declaring such cause, and the expediency of electing a mayor for the time being to supply the vacancy thus occasioned, the board of aldermen shall issue their warrants in due form, for the election of a mayor, and the same proceedings shall be had as are hereinbefore provided for the choice of a mayor.

Accountability
of all boards
and officers for
public money.

1821, c. 110, § 20.

SECT. 51. All boards and officers acting under the authority of the said corporation, and entrusted with the expenditure of public money, shall be accountable therefor to the city council, in such manner as they may direct; and it shall be the duty of the city council to publish and distribute annually, for the information of the citizens, a particular statement of the receipts and expendi-

¹ Where the mayor and aldermen are required to do anything under general statutes, the board of aldermen has entire jurisdiction. Gen. Sts., c. 19, § 17.

² Where appointments to office are required to be made by "the mayor and aldermen" under general statutes, the aldermen alone have the appointing power. Gen. Sts., c. 19, § 17. It appears that St. 1876, c. 80, does not affect the city of Boston.

tures of all public moneys, and a particular statement of all city property. Annual financial statement.

[SECT. 52. ¹The qualified voters of each ward shall, at the annual meeting, be called upon to give in their votes for one able and discreet person, being an inhabitant of the ward, to be an overseer of the poor, and thereupon the same proceedings shall be had as are before directed in the election of members of the common council. And the persons thus chosen shall together constitute the board of overseers for said city, and shall continue to have all the powers, and be subject to all the duties, now by law appertaining to the overseers of the poor of the city of Boston, until the same shall be altered or qualified by the legislature.] Election of overseers of the poor.
1821, c. 110, § 19.
1849, c. 211.
1864, c. 128.

Their powers and duties.
22 Pick. 122.

[SECT. 53. ²The school committee shall consist of the mayor of the city, the president of the common council, and of the persons hereinafter mentioned. A majority of the persons duly elected shall constitute a quorum for the transaction of business; and at all meetings of the board, the mayor, if present, shall preside.] The school committee.
1835, c. 128, § 1.
1851, c. 309.

[SECT. 54. ²At the annual election next after the passage of this act, the qualified voters of each ward shall be called upon to give in their ballots for six inhabitants of the ward to be members of the school committee; and the two persons who receive the highest number of votes, or, in case more than two receive an equal number of votes, the two persons who are senior by age, shall hold their office for three years from the second Monday in January next ensuing, and the next two persons who receive the highest number of votes, or who are senior by age in the contingency aforesaid, shall hold their office for two years from said date, and the two other persons shall hold their office for one year from said date; and at every subsequent annual election, two persons shall be chosen in each ward, to be members of the school committee for the term of three years.] Same subject.

SECT. 55. ²The persons so chosen as members of the school committee shall meet and organize on the second Monday of Jan- Organization of school committee.
1875, c. 241.

¹ By St. 1864, c. 128, overseers of the poor, twelve in number, are to be elected by concurrent vote in the city council, four being chosen each year.

² By St. 1875, c. 241, the school committee is made to consist of twenty-four members elected by the qualified voters of the city at large, eight being elected each year.

Secretary and
subordinate
officers.
1875, c. 241.

uary, at such hour as the mayor may appoint. They may choose a secretary and such subordinate officers as they may deem expedient, and shall define their duties and fix their respective salaries.

Powers and
duties of school
committee.
1821, c. 110, § 19.
1875, c. 241.

SECT. 56. ¹ The said committee shall have the care and management of the public schools, and may elect all such instructors as they may deem proper, and remove the same whenever they consider it expedient. And generally they shall have all the powers, in relation to the care and management of the public schools, which the selectmen of towns or school committees are authorized by the laws of this commonwealth to exercise.

Qualifications of
voters at municipal
elections,
etc.
1821, c. 110, § 8.
1874, c. 376.

SECT. 57. Every male citizen of twenty-one years of age and upwards, excepting paupers and persons under guardianship, who shall have resided within the commonwealth one year, and within the city six months next preceding any meeting of citizens, either in wards or in general meeting, for municipal purposes, and who shall have paid by himself or his parent, master or guardian, any State or county tax, which, within two years next preceding such meeting, shall have been assessed upon him in any town or district in this commonwealth, and also every citizen who shall be by law exempted from taxation, and who shall be, in all other respects, qualified as above mentioned, shall have a right to vote at such meeting, and no other person shall be entitled to vote at such meeting.²

Board of aldermen to make
lists of voters
prior to every
election.
1874, c. 60.

[SECT. 58. ³ It shall be the duty of the board of aldermen, prior to every election of city officers, or of any officer or officers under the government of the United States or of this commonwealth, to make out lists of all the citizens of each ward qualified to vote in such election, in the manner in which selectmen and

¹ See St. 1875, c. 241, reorganizing the school committee.

² By the twentieth amendment of the constitution of the State (adopted May 1, 1857), no person shall have a right to vote "who shall not be able to read the constitution in the English language and write his name." The amendment does not, however, apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who in May, 1857, had the right to vote, or who was then sixty years of age and upwards. See "Elections," *post*, p. 234.

³ By St. 1874, c. 60, the duty of preparing the lists of voters was transferred to a board of registrars of voters.

assessors of towns are required to make out similar lists of voters, ^{1821, c. 110, § 24.}
 and for that purpose they shall have free access to the assessors' ^{1874, c. 60.}
 books and lists, and shall be entitled to the aid and assistance of
 all assessors, assistant assessors, and other officers of said city.]
 And it shall be the duty of said board [of aldermen] to deliver
 such list of the voters in each ward, so prepared and corrected, to
 the clerk of said ward, to be used by the warden and inspectors
 thereof at such election, and no person shall be entitled to vote at
 such election whose name is not borne on such list. And to pre-
 vent all frauds and mistakes in such elections, it shall be the duty
 of the inspectors in each ward to take care that no person shall
 vote at such election whose name is not so borne on the list of
 voters, and to cause a mark to be placed against the name of each
 voter on such list, at the time of giving in his vote. [And the
 city council shall have authority to establish such rules and regula-
 tions, as to making out, publishing and using such lists of qualified
 voters, as they shall deem proper, not inconsistent with the con-
 stitution and laws of the commonwealth.]

Inspectors to
 allow no one to
 vote whose
 name is not on
 the list.

SECT. 59. All elections for governor, lieutenant-governor, sena-
 tors, representatives, representatives to congress, and all other
 officers, who are to be chosen and voted for by the people, shall be
 held at meetings of the citizens qualified to vote in such elections,
 in their respective wards, at the time fixed by law for those elec-
 tions respectively. And at such meetings, all the votes given in
 being collected, sorted, counted, and declared by the inspectors of
 elections in each ward, it shall be the duty of the clerk of such
 ward to make a true record of the same, specifying therein [the
 whole number of ballots given in,] the name of each person voted
 for, and the number of votes for each, expressed in words at length.
 And a transcript of such record, certified by the warden, clerk, and
 a majority of the inspectors of elections in such ward, shall forth-
 with be transmitted or delivered by each ward clerk to the clerk of
 the city. And it shall be the duty of the city clerk forthwith to
 enter such returns, or a plain and intelligible abstract of them, as
 they are successively received, in the journals of the proceedings
 of the board of aldermen, or in some other book kept for that pur-
 pose. And it shall be the duty of the board of aldermen to meet
 together within two days after every such election, and examine

Elections of
 national and
 state officers.
 1852, c. 209.
 G. S. c. 7 & 8.
 1874, c. 376.
 1876, c. 188.

See xiv. Amend.
 const.
 G. S. c. 7, § 14.

Examination
 and return of
 voters.
 1876, c. 188, § 5.

Certificate.
1876, c. 188, § 5.

Separate lists of
votes for gover-
nor, etc., to be
transmitted to
the secretary or
to sheriffs.

G. S. c. 7, §§ 15-
17.

Votes for elec-
tors of presi-
dent, etc., how
and when to be
transmitted to
the secretary.
1844, c. 167, § 1.
G. S. c. 9, § 12.

Proceedings in
case represen-
tatives are not
chosen.

1874, c. 376, § 32.

Proceedings in
case of no elec-
tion of represen-
tatives to con-
gress.

G. S. c. 9, § 5.

and compare all the said returns, and thereupon to make out a certificate of the result of such election, to be signed by a majority of the aldermen, and also by the city clerk, which shall be transmitted, delivered, or returned, in the same manner as similar returns are by law directed to be made by the selectmen of towns; and such certificates and returns shall have the same force and effect, in all respects, as like returns of similar elections made by the selectmen of towns. At the election of governor, lieutenant-governor, and senators, it shall be the duty of the board of aldermen to make and seal up separate lists of persons voted for as governor, lieutenant-governor, and senators of the commonwealth, with the number of votes for each person, written in words at length against his name, and to transmit said lists to the secretary of the commonwealth, or to the sheriff of the county. The board of aldermen shall, within three days next after the day of any election of electors of President and Vice-President of the United States, held by virtue of the laws of this commonwealth, or of the United States, deliver, or cause to be delivered, the lists of votes therefor, sealed up, to the sheriff of the county; and the said sheriff shall, within four days after receiving said lists, transmit the same to the office of the secretary of the commonwealth; or the said aldermen may, and when the office of sheriff is vacant, they shall themselves, transmit the said lists to the said office, within seven days after the election; and all votes not so transmitted shall be rejected. [In all elections for representatives to the general court, in case the whole number proposed to be elected shall not be chosen according to law, by the votes legally returned, the board of aldermen shall forthwith issue their warrants for a new election, agreeably to the constitution and laws of this commonwealth, and the same proceedings shall be had, in all respects, as are hereinbefore directed;]¹ and in case of no choice being made of representatives to congress, in either district of which the city of Boston composes a part, or in case of any vacancy happening in said districts, or either of them, the governor shall cause precepts for new elections to be directed to the board of aldermen of said city as often as occasion shall require; and such new elections shall be held, and all proceedings thereon had, and returns made, in conformity with the foregoing provisions.

¹Amended by St. 1874, c. 376, § 32.

SECT. 60. General meetings of the citizens, qualified to vote in city affairs, may from time to time be held to consult upon the common good, to give instruction to their representatives, and to take all lawful measures to obtain a redress of any grievances, according to the right secured to the people by the constitution of this commonwealth. And such meetings shall and may be duly warned by the board of aldermen, upon the requisition of fifty qualified voters of said city. The mayor, if present, shall preside, and the city clerk shall act as the clerk of such meetings.

General meeting of the citizens.
1821, c. 110, § 25.

SECT. 61. All warrants for the meetings of the citizens for municipal purposes, to be had either in general meetings or in wards, shall be issued by the board of aldermen, and in such form, and shall be served, executed and returned, at such time and in such manner, as the city council may by any by-law or ordinance direct and appoint.

Warrants for meetings to be issued by the board of aldermen.
1821, c. 110, § 26.

SECT. 62. Nothing in this act contained shall be so construed as to restrain or prevent the legislature from amending or altering the same whenever they shall deem it expedient.

Power of legislature to alter the charter.
1821, c. 110, § 30.

SECT. 63. All acts and parts of acts inconsistent with this act are hereby repealed: *provided, however*, that the repeal of the said acts shall not affect any act done, or any right accruing or accrued, or established, or any suit or proceeding had or commenced in any civil case, before the time when such repeal shall take effect; and that no offence committed, and no penalty or forfeiture incurred, under the acts hereby repealed, and before the time when such repeal shall take effect, shall be affected by the repeal; and that no suit or prosecution pending at the time of the said repeal for any offence committed, or for the recovery of any penalty or forfeiture incurred, under the acts hereby repealed, shall be affected by such repeal; and *provided*, also, that all persons, who, at the time when the said repeal shall take effect, shall hold any office under the said acts, shall continue to hold the same according to the tenure thereof; and *provided*, also, that all the by-laws and ordinances of the city of Boston, which shall be in force at the time when the said repeal shall take effect, shall continue in force until the same are repealed by the city council; and all officers elected under such by-laws and ordinances shall continue in office according to the tenure thereof.

Repeal of first charter.
Proviso.

Repeal not to
revive other
acts.

Act to be sub-
mitted to the
citizens.
1 Pick. 375.

If adopted,
when to take
effect.

SECT. 64. No act which has been heretofore repealed shall be revived by the repeal of the acts mentioned in the preceding section.

SECT. 65. This act shall be void unless the inhabitants of the city of Boston, at a legal meeting called for that purpose, by a written vote determine to adopt the same;¹ and the qualified voters of the city shall be called upon to give in their votes upon the acceptance of this act, at meetings in the various wards, duly warned by the mayor and aldermen, to be held on or before the second Monday of November; and thereupon, the same proceedings shall be had respecting the sorting, counting, declaring, recording and returns of said votes, as is herein provided at the election of mayor; and the board of mayor and aldermen shall, within three days, meet together and compare the returns of the ward officers; and if it appear that the citizens have voted to adopt this act, the mayor shall make proclamation of the fact, and thereupon the act shall take effect for the purpose of electing municipal officers at the next annual election, and for all other purposes it shall take effect on and after the first Monday of January next [1855].

NOTE. — The general powers and duties of cities and towns are contained in chapters 18 to 25, inclusive, of the General Statutes. The most important provisions of those chapters are incorporated in the following pages under the subjects to which they relate. Gen. St., c. 19, § 2, provides that all laws relating to towns shall apply to cities so far as they are not inconsistent with the general or special provisions relating thereto; and cities shall be subject to the liabilities, and city councils shall have the powers, of towns; the mayor and aldermen shall have the powers and be subject to the liabilities of selectmen, and the city clerks, treasurers, and other city officers, those of corresponding town officers, if no other provisions are made in relation thereto.

¹ Accepted November 13, 1854. Yeas, 9,166; Nays, 990.

SEAL OF THE CITY.

AN ORDINANCE TO ESTABLISH THE CITY SEAL.

Be it ordained by the mayor, aldermen, and common council of the city of Boston, in city council assembled, That the design hereto annexed, as sketched by John R. Penniman, giving a view of the city, be the device of the city seal; that the motto be as follows, to wit: "SICUT PATRIBUS SIT DEUS NOBIS"; and that the inscription be as follows, to wit: "BOSTONIA CONDITA A. D. 1630. CIVITATIS REGIMINE DONATA A. D. 1822."

Ordinance to
establish the
city seal, Jan. 2.
1823.



ACTIONS.¹

STATUTES.

Actions, etc., by and against the city, where may be brought, and when may be removed.

G. S. c. 123, § 6.

1. Actions, suits, and prosecutions, by and against the city of Boston, may be brought in either of the counties of Suffolk, Essex, Middlesex, or Norfolk, or in the county where the plaintiff lives; but if brought by the city in the county of Suffolk, may be removed to one of the other of said counties, as provided in the following section.

If brought by the city in Suffolk County, defendant may remove to another county. Proceedings in such case. Ibid. § 7.

2. The defendant or tenant, at the term at which his appearance is entered, may file a motion in writing for the removal of the suit, and the court shall thereupon order it to be removed to the proper court in such one of the other of said counties as the attorney of the city of Boston elects. Said attorney shall enter the same accordingly in the court so designated, at the then next term, and file therein certified copies of the writ or other process and of the order of removal; and the proceedings shall be conducted in like manner as if the suit had been originally commenced in that county.

Civil actions to recover forfeitures, where to be brought. Ibid. § 8.

3. Every civil action for the recovery of a forfeiture shall be brought in the county in which the offence was committed, unless a different provision is made in the statute imposing the forfeiture.

Inhabitants of Boston not disqualified by interest from act.

4. No person shall be disqualified from acting as judge, magistrate, appraiser, or officer of any kind in a suit or proceeding in which any city or town is interested, by reason of his interest as

¹ When judgment is recovered against the inhabitants of a city, town, parish or school district, execution may be levied upon the property of any inhabitant thereof, as each inhabitant must be considered a party to the suit. 5 Dane Ab. 158; 7 Mass. 187; 14 Mass. 216; 19 Pick. 564; 6 Met. 546.

An incorporated city need not sue in the name of "the inhabitants of the city," but may sue by its name of incorporation. 1 Met. 473.

Corporations, created by the legislature for purposes of public policy, are subject by the common law to an indictment for the neglect of duties enjoined on them; but are not liable to an action for such neglect, unless the action be given by some statute. 9 Mass. 247.

an inhabitant thereof. And no juror shall be disqualified by reason of being an inhabitant of the city of Boston.

Ingas jurors, etc.
G. S. c. 122, § 13.
11 Cush. 411, 412.
2 Allen, 402.

5. When a town or city is required to enter into a recognizance, the selectmen of the town, or the mayor and aldermen of the city, may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the town or city, and it shall be binding, like any other contract made by such town or city. No surety shall be required in such recognizance.

Board of aldermen may authorize any person to enter into a recognizance in behalf of the city.
G. S. c. 18, § 18.
G. S. c. 19, §§ 2, 17.

6. In all prosecutions by complaint before the police court for the city of Boston, founded on the special acts of the legislature, the by-laws of the town of Boston, or the ordinances or the by-laws of the city of Boston, it shall be sufficient to set forth, in such complaint, the offence fully and plainly, substantially and formally; and in such complaint it shall not be necessary to set forth such special act, by-law, ordinance, or any part thereof.

In prosecutions, etc., on special acts, ordinances, etc., what must be set forth, and what need not be set forth.
1824, c. 28, § 5.
G. S. c. 171, § 16.

The General Statutes, chap. 171, § 16, extend this provision to any "complaint, prosecution, or other process."

AMUSEMENTS.

STATUTES.

1. The mayor and aldermen or selectmen of any city or town may license theatrical exhibitions, public shows, public amusements and exhibitions of every description, to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher, obtained for money or any valuable thing, upon such terms and conditions as they deem reasonable;¹ and they may revoke or suspend the same at their pleasure.

Board of aldermen may license theatrical and other exhibitions.
1821, c. 110, § 13.
City Chart. § 33.
G. S. c. 88, § 74.
G. S. c. 19, § 17.
9 Pick. 415.
6 Cush. 174.
7 Gray, 162.

2. No license shall be granted by the mayor and aldermen or selectmen of any city or town for any exhibition mentioned in the foregoing section at which children under the age of fifteen years are employed as acrobats, contortionists or in any feats of gymnastics or equestrianism.

License not to be granted for shows where children under fifteen are employed as gymnasts, etc.
1874, c. 279.

¹ Under this provision the mayor and aldermen may exact money for the license. 9 Pick. 415.

Penalty for setting up, etc., such exhibition without license. G. S. c. 88, § 75.
4 Cush. 74.
6 Cush. 174.

3. Whoever offers to view, sets up, sets on foot, maintains, carries on, publishes, or otherwise assists in or promotes, any such exhibition, show, or amusement, without such license, shall be punished by fine not exceeding five hundred dollars for each offence.

Penalty for setting up theatrical exhibitions at which lager-bier, etc., is sold. G. S. c. 88, § 76.

4. Whoever offers to view, sets up, sets on foot, maintains or carries on, a theatrical exhibition, public show, concert or dance-hall exhibition, of any description, at which lager-bier or other intoxicating liquors are sold or exposed for sale, with the consent of those who get up, set on foot, or otherwise promote, such exhibitions or shows, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the house of correction not more than two years, unless such exhibition or show has been first duly licensed as provided by section seventy-four [§ 1 of this digest]. This section shall not authorize the licensing of the sale, at any exhibition or show, of liquors the sale of which is prohibited by law.

Masked balls, etc., forbidden under penalty. Ibid. § 77.

5. Whoever gets up, sets on foot, causes to be published, or otherwise aids in getting up and promoting, any masked ball or other public assembly, at which the company wear masks or other disguises and to which admission is obtained upon payment of money or the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, shall, for the first offence, be punished by fine not exceeding five hundred dollars; and for any subsequent offence, by imprisonment in the jail or house of correction not exceeding one year.

Police court shall bind over offenders and require sureties for their good behavior. Ibid. § 78.

6. Any justice of the peace or police court, upon complaint made of an offence against the provisions of the three preceding sections, shall bind over all persons so offending, to appear at the next term of the superior court, and shall also require such persons to find sureties for the keeping of the peace, and being of good behavior, until such term of the court, and shall commit such persons upon their refusing or neglecting so to recognize and find sureties.

No distinction to be made on account of color, etc. 1865, c. 277.

7. No distinction, discrimination or restriction on account of color or race shall be lawful in any licensed inn, in any public place of amusement, public conveyance or public meeting in this commonwealth. Any person offending against the provisions of this act (St. 1865, c. 277) shall be punished by a fine not exceeding fifty dollars.

8. It shall not be lawful to exclude persons from, or restrict them in any theatre or public place of amusement, licensed under the laws of this commonwealth, or in any public conveyance, or public meeting, or licensed inn, except for good cause. Any person offending against the provisions of this act (St. 1866, c. 252) shall be punished, for each offence, by a fine not exceeding fifty dollars.

Persons not to be excluded nor restricted in any licensed place of amusement.
1866, c. 252.

9. The mayor and aldermen or selectmen of any place upon complaint made to them under oath, that the complainant has reason to believe, and does believe, that any booth, shed, or other temporary erection, situated within one mile of any muster-field, cattle-show ground, or other place of public gathering, is used and occupied for the sale of spirituous or fermented liquors, or for the purpose of gaming, may, if they consider the complaint well founded, order the owner or occupant thereof to vacate and close the same forthwith. If the owner or occupant refuses or neglects so to do, the mayor and aldermen or selectmen may forthwith abate such booth, shed, or erection as a nuisance, and pull down or otherwise destroy the same in any manner they choose, or through the agency of any force, civil or military.¹

Booths, etc., used for gaming, etc., near public shows, etc., how removed.
G. S. c. 87, § 10.

RULES.²

1. No chairs, stools, or seats of any description shall be placed across the aisles or passageways in the building.

No seats to be placed in passageways.

2. No other officers shall be employed for the preservation of order in any licensed place of amusement, than members of the police force, or constables duly appointed by the mayor and aldermen.

Police officers or constables to be employed.

3. The board of aldermen reserve the right of

Aldermen may

¹The "act to suppress exhibitions of the fighting of birds, dogs, and other animals" (St. 1876, c. 85) is omitted as the city authorities are not specially charged with its execution.

² Rules of mayor and aldermen, passed August 20, 1865.

examine places
of amusement.

entering all places of amusement at all times, either individually or collectively, for the purpose of assuring themselves, by personal inspection, that matters are properly conducted, according to the tenor of the licenses issued by them; and the same privilege is to be accorded to the chief of police and his deputy.

License may be
revoked.

4. Any infraction of the foregoing statutes, or regulations of the mayor and aldermen, will be deemed a sufficient cause for the revocation of the license.

AUCTIONEERS.

STATUTES.

Board of alder-
men may license
auctioneers.
Fees. Record.
G. S. c. 50, § 1.

1. The mayor and aldermen and selectmen of any city or town, by writing under their hands, may license one or more suitable inhabitants of their respective cities and towns, to be auctioneers within the same for the term of one year, and may receive to the use of the city or town for each license the sum of two dollars. They shall record every license in a book to be kept by them for that purpose.

If they refuse,
county commis-
sioners may
license.
Ibid. § 2.

2. If, on application made to them in writing, they unreasonably refuse or neglect to license the applicant, he may, after giving them fourteen days' notice, and bonds to pay all costs, apply to the county commissioners, who, upon hearing the parties, may grant a license.

Auctioneers to
give bond.
Ibid. § 3.

3. Each auctioneer shall, if required, give bonds in a reasonable penalty with sufficient sureties to the treasurer of the city or town where he is licensed, with condition that he shall in all things conform to the laws relating to auctions.

To keep an ac-
count of sales,
etc.
Ibid. § 4.

4. Every auctioneer shall keep a fair and particular account of all goods and chattels sold by him, and of the persons from whom received, and to whom sold.

Penalty for
receiving for
sale from

5. An auctioneer who receives for sale by auction any goods from a minor, knowing him to be such, or sells by auction any of

his own goods before sunrise or after sunset, shall forfeit to the use of the town a sum not exceeding two hundred dollars for each offence.

minors, etc.
G. S. c. 50, § 5.
5 Mass. 505.

6. An auctioneer may sell at public auction in any place within his county; and when employed by others, may sell real or personal estate upon the premises where the same is situated in any place within the State. If an auctioneer sells by auction in any place where he is not authorized to sell, he shall forfeit fifty dollars.

Where auctioneers may sell. Penalty for selling where they are not authorized. G. S. c. 50, § 6.

7. If a person sells or offers for sale by auction any goods or chattels in any city or town except as is provided in this chapter,¹ the same shall be forfeited to the use of the city or town, and may be seized by the mayor and aldermen or selectmen, and libelled according to the provisions of chapter one hundred and fifty-three of the General Statutes.

Goods sold, etc., at auction, except as authorized, shall be forfeited. Ibid. § 7.

8. The tenant or occupant of any house or store, having the actual possession and control of the same, who knowingly permits a person to sell real or personal estate by public auction in such house or store, or in any apartment or yard appurtenant to the same, contrary to the provisions of this chapter,¹ shall forfeit a sum not exceeding five hundred dollars.

Penalty on tenants or occupants of any house or store, if they permit unlicensed sales therein. Ibid. § 8.

9. If a person, not licensed and qualified as an auctioneer, sells or attempts to sell any real or personal estate by public auction, he shall for each offence forfeit a sum not exceeding five hundred dollars.

Penalty for selling without license. Ibid. § 9.
19 Pick. 482.
8 Allen, 99.

10. Nothing in the preceding sections shall extend to sales made by sheriffs, deputy-sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians, assignees of insolvent debtors, or any other person required by law to sell real or personal estate.

Sales by sheriffs, etc., not included herein. Ibid. § 10.

11. Every auctioneer or other person who is guilty of fraud or deceit in relation to any sale by auction shall for each offence forfeit a sum not exceeding one thousand dollars.

Penalty for fraud or deceit in auction sales. Ibid. § 11.

12. Licenses may be granted upon such conditions respecting the places of selling goods and chattels within a city or town as the mayor and aldermen or selectmen deem expedient; and if an auctioneer makes a sale by auction at a place not authorized by his license, he shall be liable to like penalties as if he had sold without a license.

Licenses may be granted upon conditions, etc. Penalty for violation thereof. Ibid. § 12.

¹ Chapter 50 of the General Statutes.

BATHS AND WASH-HOUSES.

STATUTE.

Public baths may be established and maintained by cities and towns. 1874, c. 214, § 1.

1. Any city or town may raise money by taxation and appropriate the same in order to purchase or lease suitable lands and erect any buildings suitable for public baths and wash-houses, either with or without open drying grounds, and may make open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair and improve the same, and fit up and furnish the same with all requisite furniture, fittings and conveniences, and may raise and appropriate money therefor.

Officers may be appointed, and regulations made for management of baths. Ibid. § 2.

2. Any city or town may establish such rates for the use of said baths and wash-houses, and appoint such officers as are deemed proper to carry the provisions of this act into effect, and may make such by-laws or ordinances for their government as they from time to time deem necessary, and may authorize them to make such rules and regulations for the management of the baths and wash-houses as may seem to them expedient: *provided*, that such by-laws or ordinances, rules or regulations shall be subject to alteration or repeal at any time.

Proviso.

Subject to acceptance by cities and towns. Ibid. § 3.

3. This act shall not take effect in any city or town, until it has been accepted by the council of such city, by a two-thirds vote,¹ or by two-thirds of the legal voters of such town, present and voting at any annual meeting.

BLASTING.

STATUTE.

No person to blast rocks or other substance without license. 1868, c. 201, § 1.

1. No person shall blast any rock or other substance with gunpowder or other material, within one hundred yards of any public place or highway in the city of Boston, without license from the board of aldermen or some person designated by them in writing,²

¹ Accepted by a two-thirds vote of the city council, 2d January, 1875.

² By vote of the board of aldermen, passed August 31, 1868, the chief of police was designated as the person to issue licenses for this purpose, until otherwise ordered.

specifying the terms and conditions on which such license is granted : 1863, c. 201, § 1.
provided, however, that the remedy of any person injured by the blasting of rocks shall not be affected by this act, nor shall it be considered as applying to the surveyors of highways in the discharge of their official duties. Proviso.

2. Any person who shall, either by himself, his servant or agent, or by any person in his employ, violate any of the terms or conditions upon which the license as aforesaid shall be granted, shall forfeit and pay, for each and every offence, a sum not less than ten nor more than fifty dollars. Penalty.
Ibid. § 2.

BILLIARD TABLES, BOWLING ALLEYS AND GAMING HOUSES.

STATUTES.

1. The mayor and aldermen or selectmen of any city or town may grant a license to any person to keep a billiard table or bowling alley for hire, gain, or reward, upon such terms and conditions as they deem proper, to be, used for amusement merely, but not for the purpose of gaming for money or other property. Such license may be revoked at the pleasure of the authority granting it. Aldermen, etc.,
may grant
licenses to keep
billiard tables,
etc., for hire,
etc.
G. S. c. 83, § 69.
See § 9.

2. Licenses granted under the foregoing section shall be signed by the clerk of the city or town in which they are granted, and every such license shall be recorded by such clerk in a book kept for that purpose before being delivered to the licensee ; such license shall set forth the name of the person licensed, the nature of the business, and the building or place in such city or town in which it is to be carried on, and shall continue in force until the first day of May next ensuing, unless sooner revoked, as provided in said chapter. The clerk issuing any such license shall be entitled to receive for the use of the city or town for each license the sum of two dollars. Licenses to be
signed by city
clerk.
1876, c. 147, § 1.
To set forth
name of person,
nature of busi-
ness, etc.

Fee for license.

3. Such licenses may be granted at any time during the month of April, to take effect on the first day of May then next ensuing, and after the first day of May they may be granted for the Licenses to ex-
pire on first day
of May.
Ibid. § 2.

1876, c. 147, § 2. remainder of the year ending on the first day of the following May.

Business to be conducted at place designated in license. *Ibid.* § 3. 4. No license issued as aforesaid shall be valid to protect the licensee in any building or place other than that designated in the license, unless consent to removal be granted by the mayor and aldermen or selectmen.

Revocation of license. *Ibid.* § 4. 5. Whenever any such license shall be revoked the clerk of such city or town shall note such revocation upon the face of the record of the license, and shall give written notice of such revocation to the holder of the license, said notice to be delivered to him in person or left at the place of business designated in the license.

Penalty for keeping tables, etc., without license. G. S. c. 88, § 70. *Ibid.* 120, § 40. 109 Mass. 344. 6. Whoever without such license keeps or suffers to be kept in a house, building, yard, or dependency thereof, by him actually occupied or owned, a table for the purpose of playing at billiards, or a bowling alley for the purpose of playing at bowls, for hire, gain, or reward, or for hire, gain, or reward, suffers any person to resort to the same for such purpose, shall forfeit for every such offence a sum not exceeding one hundred dollars.¹

Penalty for admitting minors G. S. c. 88, § 71. 1866, c. 237, § 1. 98 Mass. 6. 8 Gray, 488. 7. The keeper of a billiard room or table, or bowling alley, who admits a minor thereto without the written consent of his parent or guardian, shall forfeit ten dollars for the first, and twenty dollars for each subsequent offence.

Officers may enter billiard rooms, etc., to enforce laws. G. S. c. 88, § 72. See 1862, c. 222. 8. Any marshal or his deputy, sheriff or his deputy, constable, police officer, or watchman, may at any time enter into a billiard room, bowling alley, or other room connected therewith, for the purpose of enforcing any law of the State; and whoever obstructs or hinders the entrance of such officer shall be punished by fine of not less than five nor more than twenty dollars.

Penalty on innholders, etc., for keeping, etc., implements for gaming for money, etc. G. S. c. 85, § 5. 3 Pick. 281, 300. 3 Met. 130. 9. Every innholder, common victualler, or person keeping, or suffering to be kept, in any place occupied by him, any implements such as are used in gaming, in order that the same may for hire, gain, or reward, be used for purposes of amusement, who suffers any implements of that kind to be used upon any part of his premises for the purpose of gaming for money or other property,

¹ The provisions of Gen. Stats. c. 88, § 32, apply to the erection, occupation, or use of buildings for bowling alleys in any city or town.

or who suffers a person to play at an unlawful game or sport therein, shall for the first offence forfeit a sum not exceeding one hundred dollars, or be imprisoned in the house of correction for a term not exceeding three months; and, for every subsequent offence, shall be imprisoned in the house of correction for a term not exceeding one year; and in either case shall further recognize, with sufficient sureties in a reasonable sum for his good behavior, and especially that he will not be guilty of any offence against the provisions of chapter eighty-five of the General Statutes, for three years then next ensuing.

8 Met. 232.
9 Met. 572.
3 Cush. 279.
See § 13.

10. Whoever in any place mentioned in the preceding section, for the purpose of gaming for money or other property, uses or takes part in using any billiard table, bowling alley, or other implements of gaming, or there plays at an unlawful game or sport, or, for the purpose of such gaming, uses or takes part in using a billiard table or bowling alley kept by a person licensed as provided in chapter eighty-eight of the General Statutes, shall forfeit a sum not exceeding fifty dollars for each offence.

Penalty for gaming in such places, and in places licensed for bowling alleys, etc.
G. S. c. 85, § 6.

11. Whoever keeps a common gaming house, or in a building, booth, yard, or garden, by him actually used and occupied, commonly keeps or suffers to be kept, any tables or other apparatus for the purpose of playing at any unlawful game or sport for money or any other valuable thing,¹ shall for every such offence forfeit a sum not exceeding one hundred dollars, and be committed to the house of correction for a term not exceeding six months and not less than thirty days; and shall also recognize with sufficient sureties in a reasonable sum for his good behavior, and especially that he will not be guilty of any offence against the provisions of chapter eighty-five of the General Statutes, for three years next ensuing.

Punishment for keeping common gaming house.
Ibid. § 7.

12. Whoever during, or within twelve hours of the time of holding, a cattle-show, military muster, or public gathering, within one mile of the place thereof, practises or engages in any gambling or unlawful game, shall forfeit for each offence a sum not exceeding twenty dollars. If he is discovered in the act, he may be arrested by any sheriff, deputy-sheriff, constable or other civil officer, and lawfully detained, by imprisonment in jail or otherwise, not ex-

Gaming at muster, etc.
Ibid. § 9.
See 1861, c. 127, § 2.

¹ For penalty for exhibition of fighting birds or animals, see St. 1876, c. 85.

G. S. c. 85, § 9. ceeding twenty-four hours, until a complaint is made against him for the offence.

Penalty on inn- 13. Any innholder, common victualler, or person keeping or
holders, etc., suffering to be kept in any place occupied by him, implements such
who permit im- as are used in gaming, in order that the same may, for hire, gain,
plements of or reward, be used for purposes of amusement, who, on the Lord's
gaming to be day, uses, or suffers to be used, any implements of that kind upon
used on Lord's any part of his premises, shall for the first offence forfeit a sum
day, etc. not exceeding one hundred dollars, or be imprisoned in the house
G. S. c. 84, § 11. of correction not exceeding three months; and for every subsequent
See *ante*, § 9. offence shall be imprisoned in the house of correction for a term
not exceeding one year; and, in either case, shall further recognize,
with sufficient sureties, in a reasonable sum for his good behavior,
and especially that he will not be guilty of any offence against the
provisions of this section, for the space of three months then next
ensuing. The Lord's day shall include the time from midnight to
midnight.

"Lord's day,"
what it includes.
G. S. c. 84, § 12.

Common gam- 14. If a person makes oath before a justice of the peace or po-
ing houses to be lice court that he suspects, or has probable cause to suspect, that
entered and par- a house or other building is unlawfully used as and for a common
ties arrested. gaming-house, for the purpose of gaming for money or other prop-
G. S. c. 85, § 8. erty, and that idle and dissolute persons resort to the same for
11 Met. 79. that purpose, such justice or court, whether the names of the
persons last mentioned are known to the complainant or not, shall
issue a warrant commanding the sheriff, or his deputy, or any
constable, to enter into such house or building, and there to arrest
all persons who are there found playing for money or otherwise,
and also the keepers of the same, and to take into their custody all
the implements of gaming as aforesaid, and to keep said persons
and implements so that they may be forthcoming before some
court or magistrate, to be dealt with according to law; and who-
ever is there found so playing, shall forfeit for every such offence a
sum not exceeding fifty dollars.

Persons present
at games liable
to arrest.
1869, c. 364, § 1.

15. The provisions of the foregoing section shall apply to all
persons who are found present at any game or sport played for
money or other thing of value at a common gaming house, and
such persons may be arrested and punished in like manner as per-
sons there found playing.

BOATS AND LIGHTERS.

STATUTES.

1. The mayor and aldermen and selectmen of cities and towns where lighters or other vessels are employed in transporting stones, gravel, or sand, shall annually, in March or April, appoint one or more weighers of vessels, who shall be sworn.

Board of aldermen shall appoint weighers of vessels who shall be sworn.
G. S. c. 52, § 30.
G. S. c. 19, § 17.
11 Met. 59.

2. Every lighter or other vessel employed in transporting stone sold by weight, or gravel, or sand, shall be marked on the stem and stern post nearly level with the bend of the vessel, with stationary marks of bar iron, not less than six inches in length, and two and a half inches in breadth, fastened with two good and sufficient iron bolts, driven through said stem and stern post and riveted into said bar iron, from which all other marks shall take their distance in feet, inches, and parts of inches, as the distance may require, from the lower edge of the stationary marks to the lower edge of the other marks; which marks shall be as follows: light-water marks not less than four inches in length and one inch and a half in breadth; and every four tons above said light-water marks legibly cut, or cast, in figures of 4, 8, 12, 16, 20, and so forth, up to the full capacity of the vessel. Said figures shall express the weight which such vessel is capable of carrying when the lower part of the respective numbers aforesaid shall touch the water; and all the marks shall be of good and sufficient lead or copper, fastened on the stem and stern post of each vessel with sufficient nails, not less than one inch in length.

See § 10.
Vessels, etc., to be marked.
G. S. c. 52, § 31.

3. Each weigher, when thereto requested, shall furnish the requisite marks and nails, and shall cause lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section; and during the time of weighing and marking them, all persons employed on board shall be stationed between the bulkhead and the fore chains. He shall keep a correct account of the distance of each mark below the stationary marks, in feet, inches, and parts of inches, in a book provided for that purpose, and give a certificate thereof, expressing the distance, to the master of every such vessel.

Marks.

Of what material, and how to be fastened.

Duty of weighers.
Ibid. § 32.

4. In taking tonnage of every such vessel, a deduction may be

Deduction may be made of one

ton for every inch. made of one ton for every inch that the light-water marks may be
 G. S. c. 52, § 33. under water after such vessel has discharged her loading.

Persons on board, where to keep while marks are being taken. 5. Every person on board of such vessel, who does not keep within the bounds of the bulkhead and fore chains during the time of taking her marks, or while any weigher is employed in weighing or marking, unless in case of absolute necessity, shall forfeit a sum not exceeding twenty dollars for each offence.
 Ibid. § 34.

Marks to be annually examined. 6. Such vessels shall have their marks examined annually in June, by a sworn weigher, and if the marks agree with their former certificates, he shall certify the same accordingly. Otherwise he shall keep such certificates in his possession, to be used as evidence against the master or owner of such vessel in any prosecution under the provisions of this chapter,¹ and such vessel shall be weighed again.
 Duty of weigher in such examination.
 Ibid. § 35.
 11 Met. 59.

Fees of weighers. 7. Each weigher shall receive from the owner or master of a vessel weighed and marked, twenty cents for every ton of such vessel, and four dollars for furnishing marks, nails, and other necessary articles, fastening the same, and giving the certificate. For the services required by the preceding section he shall receive one dollar and fifty cents.
 Ibid. § 36.

Penalty for neglecting to have lighters weighed. 8. Every owner or master of any such vessel who neglects to have the same weighed, marked, and examined, according to the provisions of this chapter,¹ or who removes any marks, or alters his certificate, shall forfeit a sum not exceeding three hundred dollars for each offence.
 Ibid. § 37.

Penalty for placing false marks, etc. 9. Every weigher who places any such mark contrary to the provisions of this chapter,¹ or who gives a false certificate, shall forfeit a sum not exceeding three hundred dollars for each offence.
 Ibid. § 38.

Cities may establish ordinances respecting weighing, etc., lighters etc., employed in transporting stone, etc. 10. Any city or town may establish ordinances respecting marking and weighing of lighters and other vessels employed in transporting stones, gravel, sand, or other ballast; the inspection and weighing of such ballast within the city or town, and the appointment and compensation of weighers, markers, inspectors, and other officers necessary to carry the same into effect; and may affix penalties for breaches thereof, not exceeding those mentioned in sections five, eight, and nine; which ordinances, so far as they

¹ Chapter 52 of the General Statutes.

extend, shall regulate the subject-matter thereof within the limits of the city or town. G. S. c. 52, § 39.

ORDINANCE.¹

SECTION 1. There shall be chosen, annually, in the month of March or April, by concurrent vote of the two branches of the city council, one weigher and inspector-in-chief of lighters and other vessels employed in the transportation of stones, gravel, sand, and other ballast, and three assistant weighers and inspectors, who shall severally hold their offices for one year, and until others are chosen in their places, and shall severally be removable at the pleasure of the city council. They shall also be severally sworn to perform faithfully the duties of their office.

Weigher and inspector-in-chief, and three assistants to be chosen annually and be sworn. March 28, 1860.

SECT. 2. The weigher and inspector-in-chief shall give bond to the city of Boston in the sum of one thousand dollars, with sureties to be approved by the board of aldermen, conditioned for the faithful performance of the duties of his office, and for the accounting for all the money received by him by virtue thereof.

Weigher and inspector-in-chief to give bond. Ibid.

SECT. 3. It shall be the duty of the weigher and inspector-in-chief to remain in the office, required to be kept by the weighers and inspectors, during such hours of every business day as the weighers and inspectors are required to keep their office open; to re-

Duty of weigher and inspector-in-chief. Ibid. See § 17.

¹ The ordinances in force respecting boats and lighters are those of April 14, 1853; June 24, 1853; April 10, 1854; December 31, 1854; February 18, 1857; March 28, 1860; August 11, 1864, and May 21, 1875.

Mar. 28, 1860.

ceive all orders for the services of weighers and inspectors; to depute the assistant weighers and inspectors to perform such services; to keep true and full accounts of the official transactions of the weighers and inspectors, and of all money received and expended by them by virtue of their office, and to report the same quarterly to the city council in January, April, July, and October.

Duty of assistant weighers and inspectors. Ibid.

SECT. 4. It shall be the duty of the assistant weighers and inspectors to perform, under the general direction of the weigher and inspector-in-chief, all such services as weighers and inspectors of ballast and vessels are required to perform by the laws of the commonwealth and this ordinance of the city not herein especially required to be performed by the weigher and inspector-in-chief. They shall also each day account for and pay over to the weigher and inspector-in-chief all fees received by them for their services as weighers and inspectors, and such fees, after deducting the necessary expenses of the office therefrom, shall be divided each week equally between the weigher and inspector-in-chief and the three assistant weighers and inspectors.

Certificates of weight and inspection. May 21, 1875.

SECT. 5. Whenever the assistant weighers and inspectors shall have inspected and weighed stones, sand, gravel, or other ballast, they shall forthwith report to the weigher and inspector-in-chief the name of the vessel, the number of tons, and a description of the contents, whether of stones, sand, gravel, or other ballast; and thereupon the weigher and inspec-

tor-in-chief, or, in his absence, one of the assistants May 21, 1875. designated by him, shall furnish to the owner or vendor of such stones, sand, gravel, or other ballast, a certificate of such weighing and inspection. Such certificate shall not in any case be given for ballast sold out below the light-water marks. The weigher and inspector-in-chief shall keep a record of the reports of the assistants, which record shall be open at all seasonable hours to the examination of persons interested therein.

SECT. 6. Lighters and other vessels employed in Lighters, etc.,
to be marked.
April 14, 1853. the transportation of stones, gravel, or sand, or other ballast, shall be marked on the stem and stern post with a good and sufficient iron bolt, driven through said stem and stern post, and clinched. From the centre of the head of said bolt, all other marks shall take their distance in feet, inches, and parts of inches as the distance may require, from the centre of the head of the said stationery bolts to the lower edge of the other marks, which marks shall be as follows, namely, light-water marks not less than four inches in length and one inch and a half in breadth; and every four tons above said light-water marks, legibly cut or cast in figures of 4, 8, 12, 16, 20, and so forth, up to the full capacity of the lighter or vessel, and said figures shall express the weight which such vessel is capable of carrying, when the lower part of the respective numbers aforesaid shall touch the water, and shall be fastened on the stem and stern post of each lighter or vessel, with sufficient nails, not less than one inch in length; and other marks shall be set

April 14, 1853.

on the stem and stern post of every lighter or vessel between every two marks, that the tonnage of the same may be distinguished by a regular progression of two tons.

Weighers and inspectors to furnish marks and nails when requested, and keep account of distance of marks, and give certificates thereof.
Ibid.

SECT. 7. Every such weigher and inspector shall furnish all the requisite marks and nails when thereto requested, and shall cause all such lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section; and during the time of so weighing and marking, all the persons on board of such lighter or vessel shall be stationed between the bulkhead and the fore chains thereof. The weigher shall keep a correct account of the distance of each mark from the centre of the head of the stationary bolts, in feet, inches, and parts of inches, in a book to be kept for that purpose, and shall give a certificate thereof, expressing the distance, as aforesaid, to the master of every such lighter or vessel weighed and marked as aforesaid.

Deduction may be made of one ton for every inch.
April 14, 1853.

SECT. 8. In taking the tonnage of every such lighter or vessel, a deduction may be made, after such vessel shall have discharged its loading, of one ton for each and every ton the light-water marks may be under water.

Penalty for not keeping within certain bounds while marks are taken.
Ibid.

SECT. 9. Every person, on board of any such lighter or vessel, who shall not keep within the bounds of the bulkhead and fore chains during the time of taking her marks, unless in case of absolute necessity,

shall forfeit a sum not exceeding fifty dollars for each offence. April 14, 1853.

SECT. 10. Such lighters or vessels shall have their marks examined each year, in the month of June, by some one of the said weighers and inspectors, and if the marks agree with their former certificates, such weigher and inspector shall certify the same accordingly. Otherwise, he shall keep such certificates in his possession to be used as evidence against the master or owner of such vessel in any prosecution under any statute of the commonwealth or ordinance of the city of Boston; and such lighter or vessel shall be weighed again. For the services required by this section, the weigher and inspector shall receive one dollar and fifty cents.

Marks to be examined annually.
Duty of weigher and inspector in such examination.
His fees.
Ibid.

SECT. 11. All stones, gravel, sand, or other ballast brought to the city of Boston by water and sold by weight to be delivered at any place within the said city of Boston, or into any vessel in the harbor of said city, shall be inspected by the weighers and inspectors appointed by the city of Boston: *provided*, that this section shall not apply to sand sold for building purposes, unless the purchaser thereof shall request an inspection.

Stones, gravel, ballast, etc., to be inspected.
April 10, 1854.
Feb. 18, 1857.

Proviso.

SECT. 12. In any case of the sale, by weight of stones, gravel, sand, or other ballast, to be delivered at any place in the city of Boston, or into any vessel in the harbor of said city, it shall be the duty of one of said weighers and inspectors to go on board of the

Mode of inspection.
April 10, 1854.
Feb. 18, 1857.

Feb. 18, 1857.

lighter or other vessel containing the same, and inspect the marks of such lighter or other vessel, before and after the delivery of such stone, gravel, sand, or other ballast; and the person having charge of such lighter or other vessel shall, before such delivery, trim the same so as to make said lighter or other vessel swim at equal marks at stem and stern, if so required by the weigher and inspector, and shall pump all the

Penalty for wilfully hindering any weigher and inspector.
April 10, 1854.

water out; and in case any person shall wilfully hinder any weigher and inspector acting under this ordinance from going on board such lighter or other vessel, or shall begin to deliver therefrom the stones, gravel, sand, or other ballast sold by weight, before such lighter or other vessel shall be trimmed to swim at equal marks, when so required by the weigher and inspector, and the water pumped out, he shall forfeit a sum not exceeding one hundred dollars for every such offence.

Penalty for delivering stones, etc., without inspection, or for altering or counterfeiting marks or certificate.
April 10, 1854.
Feb. 18, 1857.

SECT. 13. Every person who shall deliver stones, gravel, sand, or other ballast sold by weight, when an inspection of the same is required by this ordinance, from any lighter or other vessel, which shall not have been weighed, marked, and inspected, as is provided herein, or which shall not have been weighed and marked under previous laws or ordinances, or shall alter or counterfeit the marks or certificate of any lighter or other vessel, as aforesaid, shall forfeit a sum not exceeding three hundred dollars for every offence.

Fees for inspecting weight of stones, ballast, etc.

SECT. 14. The fees for inspecting the weight of stones, sand, gravel, or other ballast, shall be *five*

cents for every ton inspected and delivered, which shall, in all cases, be paid by the vendor of the same, and shall be repaid to him by the vendee.

April 10, 1854.
Feb. 18, 1857.
Aug. 11, 1864.

SECT. 15. Every weigher and inspector appointed as aforesaid, shall be entitled to receive, from the owner or master of each lighter or other vessel, weighed and marked by him as aforesaid, the following fees, to wit: twenty cents for every ton of such vessel, and four dollars for furnishing marks, nails and bolts, and other necessary articles, and fastening the same, and giving the certificate: *provided*, that no lighter or other vessel, which has been once weighed and marked according to law, by the weigher of the city of Boston, shall be subject to any charge for a second weighing or marking, unless it shall appear that her former weight or marks are incorrect or have been changed; and all such lighters or vessels shall be subject to the examination and inspection of every weigher or inspector, without charge, for the purpose of ascertaining whether their weight and marks are correct or have been altered.

Fees for weighing lighters, etc.
April 14, 1853.

Proviso.

SECT. 16. The accounts to be kept by said weighers and inspectors, and the certificates to be given to the owners or vendors of stone, sand, gravel, or other ballast, as described in the preceding sections, shall specify the name of the vendor, the kind of ballast, sand or gravel, or other stone, the weight and the deduction of light-water marks, the amount of fees received, and the date of certificate.

Accounts of weighers and inspectors, what to specify.
April 14, 1853.

Office hours of
weighers and
inspectors.
April 14, 1853.

SECT. 17. The weighers and inspectors appointed as aforesaid shall keep an office, and keep the same open from sunrise to sunset, — Sundays, public fast, thanksgivings, the anniversary of American independence, and other holidays, excepted, — with liberty to close the same from seven to eight o'clock in the forenoon, during the months of April, May, June, July, August, and September, and from eight to nine o'clock during the other six months, and from one to two o'clock in the afternoon through the whole year.

Penalty on owners, etc., for neglecting to have vessels weighed, etc.
Ibid.

SECT. 18. Every owner or master of any such vessel who shall neglect to have the same weighed, marked, and examined, according to the provisions of law or this ordinance, or who shall remove any marks or alter his certificate, shall forfeit a sum not exceeding three hundred dollars for every offence.

Penalty on weigher for placing false marks, etc.
Ibid.

SECT. 19. Every such weigher and inspector who shall be guilty of placing any such mark, contrary to the provisions of this ordinance, or who shall give a false certificate, shall forfeit a sum not exceeding three hundred dollars for every offence.

Master of lighter to report his arrival.
Ibid.

SECT. 20. The master of any lighter or vessel that has ballast for sale shall, on arrival, report himself to the office of the inspector.

Certificates to be shown when demanded, under penalty.
Ibid.

SECT. 21. The master of any lighter or vessel that has stones, sand, gravel, or other ballast, for sale, shall produce for examination the certificate of

marks and measurements of his vessel whenever the same shall be demanded by the inspector, and in case of neglect or refusal to produce them he shall forfeit a sum not exceeding fifty dollars. April 14, 1853.

SECT. 22. No officer or agent of the city of Boston shall purchase any stones, gravel, sand, or other ballast for said city, or make any contract therefor, or accept the delivery of the same, unless the same shall have been, or before the delivery thereof shall be, weighed and inspected according to the provisions of this ordinance, and a certificate thereof given as is hereinbefore provided; and no bill against the city, arising out of, or connected with, any such purchase, shall be approved or allowed by any committee, passed by the auditor, or paid by the treasurer, unless the said certificate shall accompany the bill for the same. No officer of city to purchase stones, etc., unless. Ibid.

SECT. 23. No person who is owner or agent, in whole or in part, of any lighter or vessel, or who has any interest therein, having stones, gravel, sand, or other ballast for sale, shall be chosen, or shall continue to be, an officer under this ordinance. Who shall not be a weigher and inspector. Ibid.

BONDS OF CITY OFFICERS.¹ORDINANCE.²

SECTION 1. The several officers named below shall give bond to the city of Boston, with sufficient sureties, as follows, to wit:—

What officers
give bonds.
Penalty of
bonds.
July 17, 1860.
June 26, 1875.

The auditor of accounts, in the penal sum of five thousand dollars; the chief of police, five thousand dollars; the city clerk, five thousand dollars; the city registrar, five thousand dollars; the harbor master, two thousand dollars; the weigher and inspector-in-chief of lighters, etc., one thousand dollars; the superintendent of Faneuil hall market, ten thousand dollars; the superintendent of health, ten thousand dollars; the superintendent of public buildings, five thousand dollars; the superintendent of public lands, five thousand dollars; the superintendent of sewers, two thousand dollars; the superintendent of streets, five thousand dollars; the water registrar, five thousand dollars; the superintendent of lamps, five thousand dollars. The sureties on said bonds shall

Liability of
sureties.
Ibid.

¹ By the city charter, § 37, the city council "may require of all persons intrusted with the collection, custody, or disbursement of public moneys, such bonds, with such conditions and such sureties, as the case may in their judgment require." For provisions in relation to bonds of treasurer and collector, see "Finance," *post*. The treasurer is required to give bonds to the amount of \$150,000; the collector to the amount of \$75,000.

² An ordinance in relation to the bonds of city officers, passed July 17, 1860; amended by ordinance in relation to the treasurer's department, passed June 26, 1875.

be jointly and severally liable for the whole penalty of the bond. July 17, 1860.

SECT. 2. The form and conditions of the bond given by each officer shall correspond with, and be applicable to, the duties to be performed by such officer; shall be such as the city solicitor shall approve; and the sureties on each bond, and the bond itself, shall be approved by the board of aldermen. The bond of each of said officers hereafter elected, except the city clerk, shall be executed, approved, and delivered before the officer enters upon the duties of his office. In case of the death or insolvency of any of the sureties on any bond so given, the officer who has given such bond shall immediately give a new bond with sufficient sureties, as hereinbefore provided; and if such officer shall fail to give such new bond within a reasonable time after notice to do so, it shall be a sufficient cause for removal from office.

Form and condition of bonds.
How approved, etc.
Ibid.

Effect of death or insolvency of any surety.
Ibid.

SECT. 3. In the bond of any officer whose duty requires him, in behalf of the city, to make contracts, or purchases, or sales, there shall be a condition inserted in substance as follows: "that he will not directly nor indirectly, for himself or others, or by others in trust for him or on his account, have any interest or concern in any contract, or agreement, or purchase, or sale, made by him in behalf of the city."

Bonds of officers, making contracts, etc., in behalf of the city.
Ibid.

SECT. 4. Each year, in the month of June, there shall be appointed a joint committee, consisting of

Annual examination of the

sufficiency of
bonds.
July 17, 1860.

two members of the board of aldermen, and three of the common council, whose duty it shall be to examine the bonds of the aforesaid officers, and report upon the sufficiency of the same; and in case any bond is found insufficient, and a new sufficient bond is not given and approved, in accordance with the provisions of this ordinance, within thirty days after notice from said committee, the city council, upon the facts being reported to them, may declare such bonds insufficient: and if the officer who has given such bond so found to be insufficient, and who has failed to give the new bond required, is elected by the city council, they may remove him from his office, and proceed to fill the vacancy.

City clerk to
provide blanks
for bonds.
Ibid.

SECT. 5. It shall be the duty of the city clerk to provide from time to time suitable blanks for the bonds of the said officers, and to furnish the same free of charge, to the said officers, when requested.

Custody of
bonds.
Ibid.

SECT. 6. The city treasurer shall have the custody of the bond of the auditor of accounts; all the other bonds shall be kept in the custody of the auditor of accounts.

BOUNDARY LINES.¹

STATUTES.

Perambulation
of city lines.
G. S. c. 18, § 3.

1. There shall be a perambulation of town [and city] lines, and they shall be run and the marks renewed, once in every five years,

¹ The town of Boston, as designated by the Court of Assistants on the 17th September, 1630, appears to have included the peninsula which extended from Roxbury line to the Winnisimmet ferryways, and also the territory known as

by two or more of the selectmen of each town, or such substitutes as they in writing appoint for that purpose. After every such renewal the proceedings shall be recorded in the records of the respective towns.

G. S. c. 18, § 3.
100 Mass. 58.
15 Pick. 44.
2 Cush. 406.
102 Mass. 148.

2. Previously to a perambulation, the selectmen of the most ancient of the contiguous towns shall give ten days' notice, in writing, to the selectmen of the adjoining town, of the time and

Notice of, to adjoining cities and towns.
Ibid. § 4.

Muddy river, or Muddy brook, now Brookline. On the 7th November, 1632, it was ordered that "the neck of land betwixt Powder-horn hill and Pullen point shall belong to Boston, to be enjoyed by the inhabitants thereof forever." On the 14th May, 1634, the court further ordered that Winnisimmet and the houses there built should join either Charlestown or Boston; also that Boston should have "convenient enlargement at Mount Wollaston, to be set out by four indifferent men." Muddy river was placed within the jurisdiction of "Newe Towne," on the 25th September, 1634; the town of Braintree, which included Mount Wollaston, was established in 1640. Winnisimmet, Rumney marsh and Pullen point were set off from Boston in 1738-39.

In the records of the selectmen of Boston, 20th May, 1788 (p. 119), the boundary line between Boston and Roxbury is defined in accordance with the provisions of an act of the General Court, passed April 30, 1787 (St. 1786, c. 87). The line was subsequently modified by the following acts:—St. 1836, c. 37; 1837, c. 202; 1850, c. 281; 1859, c. 210; 1860, c. 172. By St. 1867, c. 359, the whole of Roxbury was annexed to Boston.

By St. 1803, c. 111, that portion of Dorchester now known as South Boston was annexed to Boston.

By St. 1834, c. 102, Thompson's Island was set off from Dorchester and annexed to Boston. By St. 1855, c. 468, that portion of Dorchester now known as Washington Village was annexed to Boston. By St. 1869, c. 349, the whole of the then town of Dorchester was annexed.

By St. 1824, c. 90, the line between Boston and Brookline was changed, and a parcel of the marsh land was annexed to the city, and by St. 1825, c. 128, made a part of Ward 6. By Sts. 1870, c. 374, and 1874, c. 220, further annexations were made to Boston from the territory and inhabitants of Brookline.

By Sts. 1870, c. 146, and 1872, c. 197, portions of West Roxbury were annexed to Boston.

By St. 1874, c. 277, the boundary line between Boston and Newton was changed. By St. 1875, c. 184, a portion of the city of Boston was annexed to Newton.

By St. 1873, c. 286, the city of Charlestown was annexed to Boston. By St. 1873, c. 303, the town of Brighton was annexed to Boston. By St. 1873, c. 314, the town of West Roxbury was annexed to Boston.

Penalty for neglect.
G. S. c. 18, § 4.

place of meeting for such perambulation; and selectmen who neglect to give such notice or to attend, either personally or by their substitutes, shall severally forfeit twenty dollars, to be recovered on complaint to the use of the commonwealth, or by action of tort to the use of the town whose selectmen perform their duty.

Monuments to be erected, except, etc.
Ibid. § 5.
See 1861, c. 84.

3. The selectmen of the contiguous towns shall erect, at the joint and equal expense of such towns, permanent monuments to designate their respective boundary lines at every angle thereof, except where such lines are bounded by the ocean or some permanent stream of water. The monuments shall be of stone, well set in, and at least four feet high from the surface of the ground; and the initial letter of the respective names of such contiguous towns shall be plainly and legibly cut thereon; but it shall not be necessary to erect a new monument in a place where a permanent stone monument two feet in height above the surface of the ground already exists.

Penalty on officers for neglect.
Ibid. § 7.

4. A selectman who refuses or neglects to perform any duty required of him by the two preceding sections shall forfeit twenty dollars to the use of the commonwealth.

BOUNDARY LINES.

Line between Boston and Chelsea.
July 10, 1854.
City records, vol. 32, p. 499.

1. By an order passed by the city of Boston in 1854, and assented to by the town of Chelsea, July 10 of the same year, the line between Boston and Chelsea was established as follows: Beginning at a point 405 feet from the southerly side of Marginal street, in Chelsea, measuring southerly in the line of the easterly side of the solid wharf of the Winnisimmet company; said point being in the harbor commissioners' line, on the Chelsea side of Chelsea creek, as said line was established by the act of the legislature of Massachusetts of the 2d of May, 1849; and as the said line is described in the published City Ordinances, revised by P. W. Chandler, Esq., pages 168 and 169; and from said point running easterly on said commissioners' line, to the westerly side of Chelsea free bridge, so called; thence, still easterly, and at right angles to said bridge, to the easterly side of said bridge. It was also provided, that when said commissioners' or harbor line shall be by law

1849, c. 204.

continued or established up said Chelsea creek, on Chelsea side thereof, as far as Bass creek, so called, then, and from thenceforth, the boundary line between the city of Boston and the town of Chelsea shall be coincident with said commissioners' or harbor line, so continued and established to said Bass creek. July 10, 1854.

The boundary line between Boston and Everett was perambulated 29th June, 1876, and described as follows: Beginning at a point in the centre of the channel of Mystic river, southeastwardly of Malden bridge, where the second line between high and low water mark hereinafter described extended southwestwardly would intersect the centre of said channel; thence running northeastwardly to low-water mark in said river at a point sixty-eight (68) feet distant, southeastwardly from the southeasterly side of said Malden bridge; thence continuing northeastwardly in the same direction about nine hundred (900) feet, running along the base of the sea-wall to an iron bolt on said wall near high-water mark about fifty-four and one-half ($54\frac{1}{2}$) feet distant southeastwardly from the southeasterly line of Alford street, the letters B. and E. being marked on said wall at the side of said bolt; thence turning a little more eastwardly and still running northeastwardly through a stone monument marked B. and E. standing on the northeasterly bank of said river, and also running through a ditch in the marsh land about seven hundred and seventy-three (773) feet, to a stone monument marked B. and E. standing on the southeasterly side of said ditch; thence turning a little more northwardly and continuing northeastwardly by the easterly side of said ditch, crossing Carnes street, about three hundred and four and one-half ($304\frac{1}{2}$) feet, to a stone monument marked B. and E. standing on the westerly side of a ditch in the marsh; thence turning and running more northwardly about one hundred five and one-half ($105\frac{1}{2}$) feet to the centre of the end of the culvert at the southeasterly side of the street, known as Alford street in Boston, and Broadway in Everett; thence turning a little more eastwardly and running northeastwardly, crossing said Alford street or Broadway diagonally about one hundred sixty-nine and one-half ($169\frac{1}{2}$) feet, to a stone monument marked B. and E. standing on the northwesterly side of said Alford street or Broadway, near the corner of a private way leading from said Broadway to the Cochrane chem-

Line between
Boston and
Everett.

June 29, 1876.
City records,
vol. liv., p. 866.

June 29, 1876.

ical works in Everett; thence turning and running northwardly about one hundred eighty and one-half ($180\frac{1}{2}$) feet to a stone monument marked B. and E. standing on the southwesterly side of said private way at a corner in said boundary line; thence turning and running southwestwardly across the marsh, about five hundred and ten (510) feet, to the centre of a creek where two branches of said creek form a junction, — said line being in the range of the last-described monument and a stone monument marked B. and E. standing on the northeasterly bank of said Mystic river; thence running, generally southwestwardly, by the centre of the said creek, by an irregular line, to the mouth of said creek at low-water mark in said Mystic river; and thence continuing southwestwardly in the direction of the centre line of the straight portion of said creek nearest its mouth [said straight portion being about two hundred and sixty-nine (269) feet in length], to the centre of the channel of said Mystic river.

Line between
Boston and
Somerville.
Ibid.
City records,
vol. liv., p. 869.

The boundary line between Boston and Somerville was perambulated on the 29th of June, 1876, and described as follows: Beginning at the southerly side of the creek, northeasterly of the McLean asylum, near and north of the Boston and Lowell freight railroad at a point in the range of the first two stone monuments hereinafter described; thence running northwardly to a stone monument marked B. and S. standing in the marsh between said creek and the street known as Cambridge street in Boston and Washington street in Somerville; thence continuing northwardly in the same direction, crossing said Cambridge or Washington street, to a stone monument marked B. and S. standing at the side of a fence on land now or formerly belonging to John Fisher, on the westerly side of a private way known as Crescent street; thence turning and running northeastwardly by the southeasterly side of said Crescent street to a stone monument marked B. and S. standing near the angle in said street, at the corner of land now or formerly belonging to George Remmick; thence turning more northwardly and still running northeastwardly, a part of the way by the southeasterly line of said Crescent street, to a stone monument marked B. and S. standing at the end of a division fence on the southwesterly side of Perkins street; thence continuing northeastwardly, crossing said Perkins street and the street known as Main street

in Boston and Broadway in Somerville, to a stone monument marked B. and S. standing on the northeasterly side of said Main street or Broadway; thence continuing northeastwardly in the same direction to a stone monument marked B. and S. standing on the southwesterly side of Mystic avenue; thence continuing northeastwardly in a direct line to the centre of the channel of Mystic river, crossing said Mystic avenue and also the Boston and Maine and Eastern railroads, and running through a stone monument marked B. and S. standing near the southwesterly bank of said river on land now or formerly belonging to Cornelius Hamblen.

The boundary line between Boston and Brookline was perambulated on the 22d June, 1876, and described as follows: Beginning at a stone monument marked BO., BR., and N. standing near and southeastwardly of the Woonsocket division of the New York and New England railroad, and southwestwardly of Reservoir lane (so-called), said monument forming the junction point of the boundary lines between the cities of Boston and Newton and the town of Brookline; thence running in a northeasterly direction to a stone monument marked BO. and BR. standing on the southeasterly side of the embankment of the said railroad; thence continuing northeastwardly, crossing the said railroad obliquely, to stone monument marked BO. and BR. standing on the southwesterly side of the street known as Chestnut-hill avenue in Boston, and Brighton street in Brookline, on the division line between land of the city of Boston and land now or formerly of Francis Hunnewell; thence continuing northeastwardly, crossing said Chestnut-hill avenue or Brighton street, and also crossing Beacon street, to a stone monument marked BO. and BR. standing near the corner of a stone wall on land now or formerly belonging to said Francis Hunnewell, near and southeasterly of Englewood avenue; thence continuing northeastwardly, crossing said Englewood avenue, and running between said Hunnewell's house and stable, to stone monument marked BO. and BR. standing on the northeasterly side of Washington street, near the corner of a private street leading northeastwardly from said Washington street by the estate of William Livermore; thence turning a little more eastwardly and still continuing northeastwardly, crossing Summit avenue, to a stone monument marked

Line between
Boston and
Brookline.
June 22, 1876.
City records,
vol. liv., p. 853.

June 22, 1876.

BO. and BR. standing on the northwesterly slope of Corey Hill on the southwesterly side of a stone wall, on land now or formerly belonging to Merrill Brothers; thence continuing northeastwardly to a stone monument marked BO. and BR. standing on the northeasterly side of the street known as Warren street in Boston, and Winchester street in Brookline; thence continuing northeastwardly to a stone monument marked BO. and BR. standing on the southwesterly side of the street known as Harvard avenue in Boston, and Harvard street in Brookline, on the division line between land now or formerly belonging to Richard Holmes and Gardner P. Kingsley, and land now or formerly belonging to Shepard and Chester; thence turning a little more eastwardly, and still continuing northeastwardly, crossing said Harvard avenue or street, to a stone monument marked BO. and BR. standing in the swamp-land now or formerly belonging to the heirs of Ebenezer Francis, near and south of the street known as North Beacon street in that part of Boston formerly Brighton; thence turning more eastwardly, and running across said swamp-land to the westerly side of a small pond, on land now or formerly belonging to William H. Foster, where a small brook empties into said pond; thence by the channel of said brook—running through said pond—to a stone monument marked BO. and BR. standing at a corner in said boundary line on the southerly side of said street known as North Beacon street, in that part of Boston formerly Brighton, and Brighton avenue in that part of Boston formerly Brookline; thence turning and running eastwardly by the southerly line of said Brighton avenue to a stone monument marked BO. and BR. standing on the easterly corner of St. Mary's street and said Brighton avenue; thence turning and running southwardly by the easterly line of St. Mary's street to a stone monument marked BO. and BR. standing opposite Ivy street; thence turning a little and running southeastwardly by the southeasterly line of St. Mary's street, and by the continuation of the same through a stone monument marked BO. and BR. standing on the southerly side of Beacon street, and through a stone monument marked BO. and BR. standing on the northerly bank of Muddy brook, to the centre of the channel of said brook; thence up the channel of the said brook to the southerly side of

Longwood-avenue bridge; thence southwardly across the marsh, June 22, 1876. in a line fixed by two stone monuments, each marked BO. and BR. about six hundred and ten (610) feet, to the centre of the channel of said brook; thence continuing up the channel of said brook to a point opposite, and about eighty (80) feet distant from, a stone monument marked BO. and BR. standing on the northwesterly line of Brookline avenue, said monument being four hundred and four (404) feet southwestwardly from Francis street; thence southeastwardly about eighty (80) feet, to the last-mentioned monument, making a corner in said boundary line; thence turning and running southwestwardly by the northwesterly line of Brookline avenue, five hundred and fifty (550) feet, to a stone monument marked BO. and BR. making a corner in said boundary line; thence turning and running southeastwardly across Brookline avenue, and at right angles thereto, one hundred and forty-five (145) feet, to a stone monument marked BO. and BR. making a corner in said boundary line; thence turning and running southwestwardly, parallel to the easterly line of Brookline avenue, and eighty-five (85) feet distant eastwardly therefrom, eight hundred (800) feet, to the channel of said Muddy brook; thence up the channel of said brook to a stone monument marked BO. and BR. standing on the northerly side of the street known as Tremont street in Boston, and Washington street in Brookline; thence crossing said Tremont or Washington street, and continuing up the channel of said brook to a stone monument marked BO., BR. and W.R. standing in the middle of said brook, forming the junction-point of the former boundary lines between the city of Boston and the towns of Brookline and West Roxbury; thence continuing up the channel of said brook, crossing Pond avenue to the end of a culvert on the northeasterly side of Chestnut street; thence crossing said Chestnut street by said culvert to land now or formerly belonging to C. C. Perkins; thence up the channel of a small brook, being a tributary to said Muddy brook, to a corner in said boundary line fixed by a stone monument marked BO. and BR. standing on land formerly belonging to Quincy A. Shaw, near a fence; thence turning and running northwestwardly to a corner in said boundary line fixed by a stone monument marked BO. and BR. standing on land now or formerly belonging to Ignatius Sar-

June 22, 1876.

gent, at the side of a fence; thence turning and running southwestwardly by the southeasterly line of said Sargent's land to a stone monument marked BO. and BR. standing on said Sargent's land at the side of a fence; thence turning a little more westwardly and continuing southwestwardly to a stone monument marked BO. and BR. standing on the northerly side of the street known as Perkins street in Boston, and Cottage street in Brookline; thence continuing southwestwardly, crossing said street to a stone monument marked BO. and BR. standing at the side of a fence and near a cross-bank wall, near the top of the hill on land now or formerly belonging to S. P. Ruggles; thence continuing southwestwardly to a white-oak tree marked BO. and BR. standing on the northeasterly side of Rockwood street; thence continuing southwestwardly, crossing said Rockwood street and by a stone wall on the southeasterly side of a private way, leading from said Rockwood street to Avon street, to a stone monument marked BO. and BR. standing at the southwesterly end of said stone wall, opposite the coachman's house of Mrs. Abel Adams; thence turning a little more southwardly and continuing southwestwardly to a stone monument marked BO. and BR. standing on the northeasterly side of Avon street; thence turning a little more southwardly and continuing southwestwardly, crossing said Avon street, to a stone monument marked BO. and BR. standing on the southerly side of the street known as Pond street in Boston, and Newton street in Brookline, and also on the easterly corner of a private street known as Mt. Walley avenue; thence turning a little more westwardly and continuing southwestwardly by the southeasterly line of said Mt. Walley avenue to a stone monument marked BO. and BR. standing on land now or formerly belonging to Daniel Howard, Jr., at the side of a stone wall on the southwestwardly side of a cartway; thence turning a little more westwardly and continuing southwestwardly, crossing land of said Howard, to a stone monument marked BO. and BR. standing on land now or formerly belonging to the Central Park Land Association, at the side of a stone wall, and near a cross wall; thence turning a little more westwardly and continuing southwestwardly to a stone monument marked BO. and BR. standing in a stone wall on land now or formerly belonging to Aaron D. Weld, near a cross wall;

thence turning a little more westwardly and continuing southwestwardly to a stone monument marked BO. and BR. standing on the westerly side of the street known as Church street in Boston, and South street in Brookline; thence continuing southwestwardly to a corner in said boundary line fixed by a stone monument marked BO. and BR. standing in land now or formerly belonging to said Aaron D. Weld; thence turning and running northwestwardly to a stone monument marked BO. and BR. standing in the edge of the woodland now or formerly belonging to said Weld; thence continuing northwestwardly through woodland to a dead white-oak tree marked BO. and BR. standing in a stone wall, southeasterly of and near a cross wall; thence continuing northwestwardly, crossing a swamp, to a stone monument marked BO. and BR., and N., standing on land now or formerly belonging to James C. Gipson, at the side of a stone wall, — said monument forming the junction-point of the boundary lines between the cities of Boston and Newton and the town of Brookline.

The boundary line between Boston and Hyde Park was perambulated on the 15th of June, 1876, and described as follows: Beginning at a point in the centre of the channel of Neponset river, in the boundary line between the towns of Hyde Park and Milton, where the boundary line hereinafter described running through a stone monument standing on the northwesterly side of River street, and a stone monument standing on the northwesterly bank of said river extended southeastwardly, would intersect the centre of the channel of said river; thence running in a northwesterly direction through said stone monument marked B. and H.P. standing on the northwesterly bank of said river to said stone monument marked B. and H.P. standing on the northwesterly side of River street; thence continuing in the same direction to the centre line of the New York and New England Railroad at a point one thousand four hundred (1,400) feet northeastwardly from the northeasterly side of River-street bridge; thence continuing in the same direction to a stone monument marked B. and H.P. standing on the southeasterly side of Back street; thence continuing in the same direction to a stone monument marked B., H.P., and W.R., standing on the northwesterly side of Back street, being the junction-point of the former boundary lines between the city of Boston and the towns

June 22, 1876.

Line between
Boston and
Hyde Park.
June 15, 1876.
City records,
vol. liv., p. 855.

June 15, 1876.

of Hyde Park and West Roxbury; thence continuing northwesterly to a stone monument marked B. and H.P. standing on the southwesterly side of Ashland street; thence continuing northwesterly, crossing said Ashland street diagonally, to a stone monument marked B. and H.P. standing on the northeasterly side of said Ashland street, making a corner in said boundary line; thence turning and running southwestwardly to a stone monument marked B. and H.P. standing on the northwesterly side of Hyde Park avenue; thence continuing southwestwardly, crossing the Boston and Providence Railroad, to a stone monument marked B. and H.P. standing on the southwesterly side of Metropolitan avenue; thence continuing southwestwardly, crossing a private way known as Dale street, to a stone monument marked B. and H.P. standing in the wall near the top of the hill known as Clapboard hill or Mt. Monterey; thence continuing southwestwardly to a stone monument marked B. and H.P. standing on the easterly side of the street known as Poplar street in Boston, and West street in Hyde Park; thence continuing southwestwardly to a stone monument marked B. and H.P. standing in the low ground east of and near a cross wall; thence continuing southwestwardly to a stone monument marked B. and H.P. standing on Muddy pond dam; thence continuing southwestwardly to a white-oak tree marked B. and H.P. standing on high ground; thence continuing southwestwardly to a stone monument marked B. and H.P. standing on the easterly side of a cart-path leading to Muddy pond; thence continuing southwestwardly, across a swamp, to a stone monument marked B., H.P., and D., standing in a wall, — said monument forming the junction-point of the boundary lines between the city of Boston and the towns of Hyde Park and Dedham, east of and near the village known as Germantown.

Line between
Boston and
Newton.
June 29, 1876.
City records,
vol. liv., p. 871.

The boundary line between Newton and that part of Boston formerly Brighton was perambulated on 29th of June, 1876, and described as follows: Beginning at a point in the centre of the channel of Charles river in the range of the first two monuments hereinafter described; thence running in a southwesterly direction to a stone monument marked B. and N. standing on the southerly bank of said river; thence continuing in the same direction, crossing the Boston and Albany

Railroad, to a stone monument marked B. and N. standing June 23, 1876.
on the southerly side of the embankment of said railroad;
thence continuing in the same direction to a stone monument
marked B. and N. standing on the southeasterly side of a lane on
land now or formerly belonging to Andrew N. Burton; thence
continuing in the same direction by the southeasterly side of said
lane to a stone monument marked B. and N. standing on the north-
easterly side of Washington street; thence turning a little more
southwardly and still running southwestwardly, crossing said
Washington street, to a stone monument marked B. and N. standing
on the northeasterly side of Tremont street; thence continuing in
the same direction, crossing said Tremont street, to a stone
monument marked B. and N. standing on the northerly side of the
street known as Nonantum street in Boston and Brighton street in
Newton; thence turning and running southeastwardly, crossing
said Nonantum or Brighton street, and over Nonantum hill to a
stone monument marked B. and N. standing on the northerly side
of Kenrick street; thence continuing southeastwardly, crossing
said Kenrick street and Strong's pond, to a stone monument
marked B. and N. standing on the southerly side of said pond;
thence continuing southeastwardly to a stone monument marked B.
and N. standing on the northwesterly side of the stone wall on the
southeasterly side of South street, at a corner in said boundary
line; thence turning and running southwestwardly by the south-
easterly side of said South street, about seventy-nine (79) feet, to
a stone monument marked B. and N. standing on the southeasterly
side of said wall; thence continuing southwestwardly by the
southeasterly side of said South street, thirty-four and twenty one-
hundredths ($34\frac{20}{100}$) feet, to a stone monument marked B. and N.
standing on the southeasterly side of said wall at a corner in said
boundary line; thence turning and running southeastwardly by the
division line between land of the city of Boston and land late of
Daniel Knowles, one hundred and sixty-six (166) feet, to a stone
monument marked B. and N. standing near and north of the
Chestnut-hill driveway, at a corner in said boundary line; thence
turning and running southwestwardly by the division line between
land of the said city and land late of the said Knowles, five hundred
and thirty-seven (537) feet, to a stone monument marked B. and N.

June 29, 1876.

standing in a cross wall north of said Chestnut-hill driveway, said wall being on the division line between land late of the said Knowles and land now and formerly belonging to Amos A. Lawrence; thence continuing southwestwardly by the division line between land of the said city and land of the said Lawrence, sixty-six and fifty one-hundredths ($66\frac{50}{100}$) feet, to a stone monument marked B. and N.; thence turning a little more southwardly and still running southwestwardly by the division line between land of the said city and land of the said Lawrence, one hundred and five (105) feet, to a stone monument marked B. and N.; thence turning more southwardly and still running southwestwardly by the division line between land of the said city and land of the said Lawrence, one hundred and fifty-seven and eighty one-hundredths ($157\frac{80}{100}$) feet, to a stone monument marked B. and N.; thence turning and running southwardly by the division line between land of the said city and land of the said Lawrence, two hundred and fifty-eight (258) feet, to a stone monument marked B. and N.; thence continuing southwardly by the division line between land of the said city and land of the said Lawrence, three hundred ninety-six and seventy one-hundredths ($396\frac{70}{100}$) feet, to a stone monument marked B. and N. standing at the easterly end of a cross wall; thence turning and running southwestwardly by the division line between land of the said city and land of the said Lawrence, one hundred seventy-four and fifty one-hundredths ($174\frac{50}{100}$) feet, to a stone monument marked B. and N.; thence turning and running southwardly by the division line between land of the said city and land of the said Lawrence, two hundred sixty-three and forty one-hundredths ($263\frac{40}{100}$) feet, to a stone monument marked B. and N.; thence turning and running southeastwardly by the division line between land of the said city and land of the said Lawrence, one hundred sixty-four and eighty one-hundredths ($164\frac{80}{100}$) feet, to a stone monument marked B. and N.; thence turning and running southwardly by the division line between land of the said city and land of the said Lawrence, and crossing Beacon street, about five hundred and fifty-three (553) feet, to a stone monument marked B. and N. standing on the southerly side of said Beacon street, at a corner in said boundary line; thence turning and running in a general south-

easterly direction by the southerly and southwesterly line of said Beacon street, about two thousand six hundred fifty-seven and thirty one-hundredths ($2,657\frac{30}{100}$) feet, to a stone monument marked B. and N. standing at the side of the wall on the southwesterly line of said Beacon street; and thence running southeastwardly, crossing the Woonsocket division of the New York and New England railroad, about seven hundred and ninety-four (794) feet, to a stone monument marked BO., BR., and N., standing near said railroad and southwestwardly of Reservoir lane (so called),—said monument forming the junction-point of the boundary lines between the cities of Boston and Newton and the town of Brookline.

Boundary line between Newton and that part of Boston formerly West Roxbury: Beginning at a stone monument marked BO., BR., and N., standing on land now or formerly belonging to James C. Gipson, at the side of a stone wall,—said monument forming the junction-point of the boundary lines between the cities of Boston and Newton and the town of Brookline; thence running southwestwardly to a stone monument marked B. and N. standing on the easterly side of Arnold street; thence continuing southwestwardly in the same direction, crossing Arnold and La Grange streets, to a stone monument marked B. and N. standing on the northwesterly side of La Grange street; thence continuing southwestwardly to a stone monument marked B. and N. standing on the northeasterly side of the street known as Baker street in Boston and Dedham street in Newton; thence turning a little more southwardly and continuing southwestwardly, crossing said Baker or Dedham street, to a stone monument marked B. and N. standing in the meadow on the northeasterly bank of Charles river; and thence continuing southwestwardly in the direction of the last-described line to the centre of the channel of Charles river.

The boundary line between Boston and Dedham was perambulated on the 15th of June, 1876, and described as follows: Beginning at a stone monument marked B., H.P., and D, standing in a wall east of and near the village known as Germantown,—said monument forming the junction-point of the boundary lines between the city of Boston, and the towns of Hyde Park and Dedham; thence running southwestwardly to a stone monument

Line between
Boston and
Dedham.
June 15, 1876.
City records,
vol. liv., p. 853.

June 15, 1876.

marked B. and D. standing on the easterly side of the street known as Grove street in Boston and Bussey street in Dedham; thence continuing southwestwardly through a part of said village of Germantown to a stone monument marked B. and D. standing in a wall, making a corner in said boundary line; thence turning and running northwestwardly to a stone monument marked B. and D. standing on land now or formerly belonging to Myrick P. Sumner, John W. Thomas and Sanford Carroll, on the northwesterly side of a pond-hole; thence continuing northwestwardly, to a stone monument marked B. and D. standing on the southeasterly side of Washington street; thence continuing northwestwardly to a stone monument marked B. and D. standing on the northwesterly side of the street known as Centre street in Boston and East street in Dedham; thence continuing northwestwardly to a stone monument marked B. and D. standing near a fence on the top of a knoll on land now or formerly belonging to Hannah Draper; thence continuing northwesterly to a stone monument marked B. and D. standing at the side of a rail fence on land now or formerly belonging to Eliphalet Stone and Waldo Colburn; thence continuing northwestwardly to a stone monument marked B. and D. standing on the easterly side of the Dedham branch of the Boston and Providence Railroad; thence continuing northwestwardly to a stone monument marked B. and D. standing on the northerly side of a private roadway; thence continuing northwestwardly to a stone monument marked B. and D. standing near the upland in the edge of the meadow bordering on Charles river; and thence continuing northwestwardly across said meadow in the direction of the last-described line to the centre of the channel of Charles river.

BRIDGES.¹

STATUTES.

City may take
land for protec-
tion of bridges.

1. Whenever, in the opinion of the mayor and aldermen of a city, or the selectmen of a town, it is necessary to enter upon, use

¹ Concerning structures in tide water, see Sts. 1866, c. 149, 1869, c. 432. For grade over railroad tracks and use by street railways, see "Railroads," *post*, pp. 634, 648.

or take any land for the purpose of securing or protecting any public way or bridge, it shall be lawful for them to enter upon, use or take the same. ^{1868, c. 261, § 1.}

2. All damages sustained thereby shall be recovered in the manner provided for the assessment and award of damages occasioned by the laying out, altering or discontinuance of town-ways. ^{Award of damages. Ibid. § 2.}

3. Highways, townways, streets, causeways, and bridges, shall be kept in repair at the expense of the town, city, or place in which they are situated, when other provision is not made therefor, so that the same may be safe and convenient for travellers with their horses, teams, and carriages, at all seasons of the year.¹ ^{Ways and bridges to be repaired at expense of town. G. S. c. 44, § 1. 7 Cush. 490. 8 Allen, 245. 3 Allen, 407. 16 Pick. 541. 111 Mass. 313. 117 Mass. 509.}

4. Any city or town in which a draw for the passage of vessels through a bridge used as a public highway and maintained at the public expense is situated, shall have power to make ordinances or by-laws regulating the passage of vessels through such draw, and to annex penalties not exceeding fifty dollars for each violation thereof: *provided*, such ordinances or by-laws shall be approved by the harbor commissioners. ^{Passage of vessels through bridges may be regulated by towns, etc. 1876, c. 122, § 1.}

5. In all cases where such ordinances or by-laws are made applicable to any draw, it shall be the duty of such city or town to place said draw under the direction of a suitable person or persons, as draw-tender or superintendent, and to post in some conspicuous place, near by, a written or printed copy of such ordinances or by-laws. ^{Draw-tenders to be appointed. Ibid. § 2.}

6. Such draw-tender or superintendent shall have full control of the passing of all vessels through the draw, shall furnish all facilities for such passing, shall allow no detention, having due regard for the public travel, and shall enforce the ordinances or by-laws aforesaid. ^{To have control of passage of vessels. Ibid. § 3.}

7. If any vessel shall, through the negligence of the master or others having charge of her, or their neglect to comply with such ordinances or by-laws, or disregard of the directions of such draw-tender or superintendent, injure any bridge, draw or pier or wharf connected therewith, the owner or owners thereof shall likewise be liable to pay for such damage, to be recovered by such city or town in an action of tort. ^{Liability in case directions are not complied with. Ibid. § 4.}

¹ For damages caused by defects, see "Streets," *post*, p. 749.

Draw-tender
may remove
vessel obstruct-
ing draw.
1876, c. 122, § 5.

8. Such draw-tender or superintendent shall likewise have authority to remove any vessel obstructing such draw, or interfering with the passage of other vessels through the same, or made fast to such draw or bridge or pier or wharf connected with the same, without the consent of such draw-tender or superintendent, or wilfully violating any ordinance or by-law, and the expense of such removal shall be recovered in the manner set forth in the foregoing section.

No raft, etc., to
be moored to
any private
bridge, wharf,
etc., except, etc.
1862, c. 73, § 1.
Penalty.
Ibid. § 2.

9. By an act passed March 19, 1862, it is provided that every person who shall attach or moor any raft, or collection of spars, logs, piles, timber, or lumber to any bridge, pier, or wharf in the harbor of Boston, longer than ten hours, without the written consent of the owner thereof, shall for every such offence forfeit and pay to such owner a sum of not less than twenty-five dollars, and five dollars for every successive day during which such attachment or mooring shall be so continued; and shall be further liable for all damages to such bridge, pier, or wharf, caused by such attachment, or mooring, or any continuance thereof, to be recovered by an action of tort.

DOVER-STREET BRIDGE.¹

Incorporation of
Boston South
bridge.
1803, c. 113.

10. By an act passed March 6, 1804, William Tudor, Gardiner Greene, Jonathan Mason, and Harrison Gray Otis, and those who should become their associates, were made a corporation under the name of "The Proprietors of the Boston South Bridge," with power to construct a bridge from the southwesterly part of Boston to Dorchester neck. The bridge was immediately built, one thousand five hundred and fifty-one feet in length, at a cost of fifty-six thousand dollars, and was opened for public travel October 1, 1805. The proprietors were authorized by their charter to collect tolls from those using the bridge, and were required to pay five cents a ton to each loaded vessel of above twenty tons register passing through the draw, for the term of seventy years, at the expiration of which period the franchise was to be surrendered to the commonwealth. The provision for payment to vessels passing the draw was repealed in 1830.

¹ Formerly "Boston South bridge." See Ordinance, § 1, p. 82.

11. By the act of June 23, 1831, the proprietors of the Boston South bridge were authorized to sell to the city of Boston the franchise and materials of their bridge, to have and to hold the same to the said city and its successors forever: *provided*, that no toll or duty should ever be exacted or paid for any travel over said bridge, or passing the draw of the same, and the said city should always be held liable to keep said bridge and draw in good repair, and to raise the draw of said bridge, and afford all necessary and proper accommodations to vessels that have occasion to pass the same by night or by day, and should keep the said bridge sufficiently lighted. By the same act, the proprietors were authorized to surrender their franchise if the city of Boston should not, before September 15, 1831, pay them such sum as should be agreed upon, and receive a transfer.

Proprietors authorized to transfer the franchise and materials to the city of Boston. 1831, c. 71, § 1. To be toll free.

12. On the 16th of March, 1832, the proprietors were authorized by the legislature to discontinue the bridge as a passway, and to take up and remove the materials between that time and August first of that year, unless the city of Boston, before the first day of May, of that year, should pay them such sum as should be agreed upon for a sale and transfer of the franchise and materials to the city. On the 2d of April, the proprietors offered to sell to the city for a sum not less than thirty-five hundred dollars. This offer was accepted by the city council, and the bridge was made a public highway. A deed was executed accordingly, dated April 19, 1832, in consideration of three thousand five hundred dollars, conveying to the city of Boston, and its successors, "all the franchise and also all the materials of the Boston South bridge, together with the buildings, rights, wharves, and real estate, of the said corporation, and every part and parcel thereof, whatsoever the same may be, and wheresoever situate, with all the privileges, appurtenances, and immunities of every description to the granted premises, and any part thereof, in any wise appertaining," — "subject, nevertheless, always to all the provisos, terms, duties, conditions, and tenure in the aforesaid acts of the said commonwealth set forth and expressed."

Transfer of Boston South bridge to the city. 1832, c. 135.

Records of Suffolk deeds. Lib. 269, fol. 50.

13. By an act passed June 2d, 1874, license is granted to the Shawmut boat club to construct and maintain a boat-house upon piles on the northerly side of Dover-street bridge, subject to the

May construct a boat-house upon piles, on north-erly side of

Dover-street
bridge.
1874, c. 301.

provisions of section four of chapter one hundred and forty-nine of the acts of the year eighteen hundred and sixty-six: *provided, however*, that said license may be revoked by the board of harbor commissioners whenever in its judgment such revocation becomes expedient.

City may recon-
struct and
widen Dover-
street bridge.
1876, c. 105, § 1.

14. By an act passed April 6th, 1876, the city of Boston was authorized to repair, reconstruct and widen Dover-street bridge, to a width not exceeding sixty feet; and construct fender guards, change the location of the draw, and do such other acts as it may deem necessary, expedient or convenient in the premises, to secure a bridge and draw which shall safely and conveniently accommodate public travel and navigation; subject, however, to the provisions of chapter four hundred and thirty-two of the acts of the year one thousand eight hundred and sixty-nine.¹

May take land,
wharves, etc.
Ibid. § 2.

15. To secure and accomplish the objects and purposes of the preceding section, said city may take such lands, buildings, wharves and structures as it may deem necessary, and all damages to private property, or for land taken under this act, shall be ascertained, as provided in chapter forty-three of the General Statutes.

FEDERAL-STREET BRIDGE.²

Federal-street
bridge, author-
ity to build.
1825, c. 147,
§§ 1, 2.

16. By the act of March 4, 1826, Nathaniel Whittemore, Noah Brooks, Cyrus Alger, William Wright, and others, were made a corporation by the name of the Boston Free Bridge Corporation. The corporation was authorized to build a free bridge across the channel from or near Sea street, in Boston, to the newly-made land at South Boston, and nearly in the direction of the Dorchester turnpike, and to erect a wharf or pier on each side of said bridge, near said draws, for the accommodation of vessels passing through said bridge.

Obligations im-
posed upon the
corporation.
Ibid. § 3.

17. It was further enacted that no toll or duty should ever be exacted or paid, for any travel over said bridge, or passing the draws of the same; and that said corporation should always be held liable to keep said bridge and draws in good repair, and to

¹ "An act to further protect the rights of the commonwealth in tide waters," p. 763, supplement to Gen. Sts.

² Formerly "Boston Free bridge." See Ordinance, § 1, *post*, p. 82.

raise the draw of said bridge, and afford all necessary and proper accommodation to vessels that should have occasion to pass the same by night or by day, and should keep said bridge sufficiently lighted; and if any vessel should be unreasonably delayed or hindered in passing said draw, by the negligence of said corporation or their agents, in discharging the duties enjoined on them by that act, the owners or commanders of such vessels should recover reasonable damage therefor, of said corporation, in an action on the case, before any court proper to try the same: *provided*, that whenever the city government of Boston should assume the care and obligations of keeping said bridge in repair, lighting the same, and providing facilities for raising said draw or draws, as aforesaid, then the obligations imposed on said corporation to that effect should be annulled, and the same should devolve on the said city government; in which case the damages mentioned in this section should be sued for, before any court proper to try the same, in either of the counties of Middlesex or Essex.¹

Obligations to devolve on city government, when they shall assume the care of bridge.

18. By an act passed March 18, 1831, the city of Boston was authorized to construct and maintain such wharves or piers, on either or both sides of this bridge, as shall be necessary for the preservation and safety of said bridge: *provided, however*, that the said wharves or piers shall not extend in width from the sides of said bridge more than twenty-five feet.

City of Boston authorized to maintain wharves, etc., on both sides of the bridge. 1830, c. 121, § 1.

19. If any person shall wilfully do any injury or damage to said bridge, said wharves or piers, or shall disturb or hinder the said city in the occupation of said wharves or piers, for the purpose aforesaid, the person so offending shall forfeit and pay for each offence a penalty not less than fifty dollars, nor more than one

Penalty for injury to bridge, etc.

Ibid. § 2.

¹ In 1828 the city purchased the bridge and abutments, wharves, etc., which had been partially constructed by the corporators. By the deed of the corporation, lib. 331, fol. 13, which was executed by Francis J. Oliver, the president, on September 26, 1828, pursuant to a vote of the corporation, passed September 24, the Boston Free Bridge Corporation surrendered and conveyed the said bridge and abutments, wharves, etc., to the city of Boston, upon the terms and conditions on which the said city agreed to accept the same, by the resolve of February 5, 1827; and also assigned to the city a deed from Gardiner Green, dated August 21, 1828, and a deed from John T. Apthorp and others, dated August 1, 1828, and conveyed to the city all the lands and flats, and rights and privileges acquired thereunder.

1830, c. 121, § 2. hundred dollars, to the use of the commonwealth, to be recovered by indictment, or information in any court of competent jurisdiction, and such person so offending shall be further liable to answer in damages to the city of Boston: *provided*, that nothing in this act shall be construed as intending to impair or affect the lawful rights of any person whatsoever.

Right to use wharves, etc., shall cease, in case, etc.
Ibid. § 3.

20. Whenever the wharves or piers erected, or which shall be erected by the authority of the said act, shall be used or improved for any other purpose or purposes than those therein specified, all right and authority to maintain them shall cease, and be void.

Wharves, etc., not to be within forty feet of other wharves, etc.
1831, c. 46.

21. No part of the wharves or piers, which the city of Boston is authorized to construct by virtue of the act last cited, shall be maintained within the distance of forty feet of any wharf or pier which shall have been, or may hereafter be, lawfully constructed by any individual or individuals.

City may widen Federal-street bridge.
1869, c. 194.

22. By an act passed April 24, 1869, the city of Boston was authorized to widen Federal-street bridge, in said city, to a width equal to the width of said Federal street: *provided*, that all things done under said act should be subject to the determination and approval of the harbor commissioners, as provided in section four, of chapter one hundred and forty-nine of the acts of the year eighteen hundred and sixty-six.

MOUNT WASHINGTON-AVENUE BRIDGE.

Corporation authorized to construct a bridge.
1853, c. 255, §§ 1, 2.

23. By an act passed April 28, 1853, Benjamin T. Reed, Deming Jarves, Eben Jones, and their associates and successors, were incorporated as the Mount Washington-avenue Corporation, and were authorized and empowered to construct a pile bridge, not exceeding seventy feet in width, from a point between Wales' wharf and Foundry wharf, on Sea street, in Boston, across Fort Point channel, to the harbor line as established by the act of March 17, 1840, with a suitable draw and draw piers, which are subject to be altered and widened at the expense of the corporation and its assigns, as the legislature may from time to time require. The said corporation were also empowered to build a solid avenue, not over eighty feet wide, and to be provided with convenient draws and sluiceways from the easterly end of the

May construct avenue and street.

bridge, over the flats of the shore owners, within the line of private rights, parallel with West Broadway, to a point in I street continued, and thence easterly to the uplands owned by the city; and also a street, not over seventy feet in width, from the westerly end of the bridge to Sea street; and to construct and maintain, under the direction of the mayor and aldermen, a double railroad track, for horse power only, through the whole, or any part of the avenue, bridge, and street, to Sea street, and thence to the Boston and Worcester Railroad. The corporation were required, before commencing the construction of the bridge, to give bonds, with satisfactory sureties, to the attorney-general of the commonwealth, in the sum of ten thousand dollars, that the draw shall be properly raised until the bridge be transferred to and accepted by the city. The street, bridge, and avenue are to be open for public travel, free of toll; and the act was to be void unless the bridge, street, and avenue were completed in three years from its passage.

1853, c. 255, §§ 3, 4, 8, 9, 10, 15.

Railroad track.

To be toll free.

24. The city of Boston was empowered by the act to take and hold all the rights and powers granted to said corporation, on such terms as could be agreed upon between said city and said corporation, and to construct and maintain, or maintain after they are constructed, the said street, bridge, and avenue; and in case of such transfer, the city is subjected to the same duties as are imposed by the act upon the corporation.¹

City of Boston empowered to take and hold all the rights of the corporation on terms, etc.
Ibid. § 7.

BROADWAY BRIDGE.

25. By an act passed April 25, 1866, the city of Boston was authorized to build a bridge across Fort Point channel, at the

City authorized to build a bridge over Fort Point

¹ On the 4th of August, 1854, the city entered into a contract with the Mount Washington-avenue Corporation, that the said corporation should, within three years, construct the avenue from Granite street to I street, and transfer all their right, title, and interest in the same to the city; and that the city should have authority, under said corporate power, to construct the bridge, avenue, and street, by such parties as they might select for the purpose. On the 7th of August, 1854, the city executed a contract with the Boston Wharf Company to build the street, bridge, and avenue described in the charter of the corporation, within one year, for the sum of \$60,000; the said company to release Granite street to the city, and to allow the city rights of drainage into the sea.

channel in extension of Broadway.
1866, c. 188.

place where Broadway, if continued in a straight line, or nearly a straight line, from South Boston to Boston proper, would cross said channel; and for that purpose to drive piles in said channel, necessary therefor, and also for such draw piers as may be deemed expedient and proper for the public welfare and its own convenience; and said bridge, so constructed, shall be provided with good and suitable draws, which said city shall open and close at all times for the accommodation of vessels having occasion to pass the same; and the lines of the piles of the structure shall be driven in the direction of the current: *provided, however*, that this structure shall be erected under the direction and supervision of the board of harbor commissioners, and in such manner as in the opinion of said commissioners shall be in accordance with the mode of construction described and recommended in the seventh report of the United States commissioners on Boston harbor, made to the city of Boston, in the year eighteen hundred and sixty-four.¹

CHELSEA-POINT BRIDGE.

Chelsea-Point bridge incorporated, etc.
1835, c. 100.

26. By the act of April 1, 1835, Joseph Burrill, Joseph Belcher, and John W. Tewksbury, were incorporated as the proprietors of Chelsea-Point bridge, with power to build, within three years, a free bridge, not less than twenty feet wide, across the creek between the westerly side of Pulling Point, in Chelsea, and the easterly side of Belleisle, in Boston.

Authorized to take toll.
1843, c. 91.

27. By an act passed March 24, 1843, the proprietors of said bridge were authorized to collect certain tolls therein set forth, for passage over said bridge, said privilege to continue for ten years from April 1, 1843. It was provided that "all scholars while going to and from school shall be permitted to pass free of toll."

City authorized to purchase Chelsea-Point bridge.
1849, c. 106, § 1.

28. By an act passed April 17, 1849, the city of Boston was authorized and empowered to purchase the franchise of Chelsea-Point bridge, with all the rights and property incident thereto.

A highway authorized to be

29. The mayor and aldermen of the city of Boston, as county commissioners therein, were authorized to lay out a highway over

¹ The resolve and orders for the extension of Broadway from Federal street to Albany street were passed by the city council May 3, 1869. See City Doc. 31, 1869.

so much of Chelsea-Point bridge, and the tide waters thereat, as is within the city of Boston. That portion of the bridge was laid out as a highway July 1, 1850. The county commissioners, or those at any time thereafter holding the like authority, were authorized and empowered to lay out a highway over so much of Chelsea-Point bridge, and the tide waters thereat, as is within the town of North Chelsea; and also to lay out a highway over the tide waters between Pulling point, and the neck of land leading to Point Shirley, in North Chelsea, so as to form a continuous highway from East Boston to Point Shirley.

laid out over
said bridge,
etc.
1849, c. 106, § 2.

CHELSEA-STREET BRIDGE.¹

30. By an act of the legislature, passed March 28, 1834, Benjamin T. Reed, Amos Binney, John Henshaw, and others, were incorporated as proprietors of the *Chelsea Free bridge*; and they were authorized to construct a free bridge, twenty-five feet in width, across Chelsea creek, from Noddle's island to Shurtleff's farm in Chelsea.²

Chelsea Free
bridge incorpo-
rated, etc.
1834, c. 30.

31. By the act of April 17, 1849, the mayor and aldermen of the city of Boston, as county commissioners therein, were authorized and empowered to lay out a highway over so much of Chelsea Free bridge, and the tide waters thereat, as are within the city of Boston; and the commissioners, or those at any time thereafter holding the like or similar authority, were authorized and empowered to lay out and construct a highway over so much of Chelsea Free bridge, and the tide waters thereat, as are within the town of Chelsea; the said bridge to be maintained with good and sufficient materials, and not less than twenty-five feet wide, with sufficient railings for the protection of passengers, and a good and sufficient draw not less than twenty feet wide, with proper piers

Highway to be
laid out over
Chelsea Free
bridge and the
tide waters
thereat.
1849, c. 109, § 1.

Bridge, how to
be maintained.

Draw.

¹ Formerly Chelsea Free bridge. See Ordinance, § 1, p. 82.

² The bridge, six hundred and ninety feet in length, was opened for public travel in October, 1834. In 1835 the proprietors of the bridge conveyed the property to the trustees of the Ferry Company. In 1848 the bridge was rebuilt, at a cost to the Ferry Company of four thousand six hundred and seventy-eight dollars and fifteen cents,

1849, c. 109, § 1. above and below the draw, for the accommodation of vessels passing through the same.¹

MERIDIAN-STREET BRIDGE.²

Bridge to be built from Meridian and Condor streets to Chelsea. 1855, c. 335, §§ 1, 2.

32. By an act passed May 15, 1855, Henry D. Gardiner, Morrill Cole, Watson G. Mayo, Noah Sturtevant, George W. Gerrish, Henry Jones, their associates and successors, were made a corporation by the name of the East Boston Free Bridge, and were authorized to build a free bridge across Chelsea creek from the corner of Condor and Meridian streets, in Boston, to Pearl street, in Chelsea.

Materials, width, railings, draw to be opened on demand, etc.

33. The bridge was to be of good materials, not less than forty feet wide, with sufficient railings for the protection of passengers, with a pivot or turn-table draw, with two openings, each not less than sixty feet wide; which draw shall at all times, on demand, be opened for the passage of vessels that cannot pass under said bridge. A forfeiture of not more than ten, nor less than two dollars was provided, in case any vessel desiring to pass the bridge should be detained more than thirty minutes, the sum so forfeited to be payable to the owner or owners of such vessel.

Forfeiture for detaining vessel more than thirty minutes.

Corporation liable in damages, when, etc.

34. Said corporation was to be liable for all damages to travellers over the said bridge, happening through any defect in the same, in the same way and manner as the towns are liable for defects in public highways and bridges.

¹ By a resolve of the mayor and aldermen, passed May 6, 1850, so much of the Chelsea Free bridge as is within the city of Boston was taken and laid out as a public highway, in the way and manner that the same was then made. The portion of the bridge and road in the town of Chelsea having been permitted to get out of order, and said town having declined to repair the same, alleging that it would be of no benefit to that town, the city of Boston, by an order of the city council, approved June 27, 1855, paid to the town of Chelsea eight thousand four hundred and seventy-three dollars, on condition that said town would give a bond to the city of Boston to keep its portion of the road and bridge in good order and repair for the future, which bond was given to the city July 12, 1855, in the penal sum of ten thousand dollars; and said bridge is now a public highway, which the two cities of Chelsea and Boston are bound to keep in repair.

² Formerly East Boston Free bridge. See Ordinance, § 1, p. 82.

35. By an act passed April 14, 1856, the city was authorized to purchase the bridge which the East Boston Free-bridge Company were authorized to build, and also any other property of said corporation, and were also authorized to construct such guards or piers as the safety of said bridge might require.¹

City authorized
to purchase the
bridge.
1856, c. 109.

CHARLES-RIVER AND WARREN BRIDGES.

36. The Charles-river Bridge Corporation was chartered by an act of the legislature passed March 9, 1785; and the bridge was opened for travel June 17, 1786. In 1841, the legislature appropriated \$25,000 to be paid to the proprietors of the bridge for a conveyance to the commonwealth of the property and franchise of the corporation. The receipts from tolls charged by the State on this bridge and Warren bridge were sufficient to establish a fund of \$50,000; and on the 1st December, 1843, the bridges were declared free, and so remained until June 1, 1854, when the income of the fund being found insufficient to sustain the bridges, and a large portion of the principal having been expended, tolls were again imposed on both bridges, to continue until a sufficient sum should be received to rebuild the Charles-river bridge, and repair the Warren bridge, and to leave in the treasury of the commonwealth a fund of \$100,000 for the future maintenance and repair of the bridges. This was accomplished in 1858, and since April 30 of that year both bridges have been free.

Charles-river
bridge company
chartered.
1784, c. 53.

Conveyance to
the common-
wealth.
1841.

Declared free.

37. The Warren Bridge Corporation was chartered in 1828. The proprietors were authorized to collect tolls until they were reimbursed the cost of building the bridge and the other necessary expenses, with five per cent. interest thereon, when the bridge was to revert to the commonwealth. They were expressly limited from taking tolls for a longer period than six years. The bridge was built and opened for travel December 25, 1828. The commonwealth in 1833 assumed the control of the bridge, and tolls were received to its use until April, 1836, when the bridge was declared free. It continued free until 1841, when, as above stated,

Warren bridge
company char-
tered.
1827, c. 127.

Commonwealth
assumed con-
trol, 1833.

¹ The bridge was purchased by the city in December, 1856, and opened for travel at that time.

1827, c. 127.

Declared free,
1858.

Commissioners
appointed to
repair bridges.
1868, c. 322.
1869, c. 272.
1870, c. 303.

Boston and
Charlestown to
support bridges.

Care of bridges
vested in
Boston.
1874, c. 259.

Middlesex R. R.
Co. not to be
released from
obligation to
make repairs,
etc.

tolls were imposed on both the Warren and Charles-river bridges until 1843. From 1854 to 1858 tolls were again charged. Since 1858 both bridges have been free.

38. By an act passed June 8, 1868 (amended by Sts. 1869, c. 272 and 1870, c. 303), three commissioners were appointed by the supreme judicial court to put Charles-river and Warren bridges in good repair for public travel; to use for that purpose the unexpended balance of the bridge funds, and to apportion and assess upon Boston and Charlestown the expense of maintaining bridges and draws. Upon the acceptance of the commissioners' award by the court it was provided that the bridges should become highways and thereafter be managed, maintained and kept in repair by the cities of Boston and Charlestown, acting through a board of commissioners consisting of one person appointed by each city.

39. By an act passed May 22, 1874 (Charlestown having been annexed to Boston), the care, management and maintenance of the Charles-river and Warren bridges were vested in the city of Boston; and it was provided that the city of Boston should maintain the said bridges as public highways at its own expense, and in accordance with such ordinances as the city council of said city may establish. It was further provided that nothing in the act should release the Middlesex Railroad Company from any legal obligation then existing, to maintain and keep in repair any portion of said bridges, or from any liability for loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of its agents or servants in the construction, management or use of its tracks on said bridges.

CHELSEA BRIDGE.¹

City of Boston
may reconstruct
part of Chelsea
bridge.
1876, c. 106, § 1.

40. By the annexation of Charlestown, the duty of maintaining and keeping in repair a portion of Chelsea bridge between Charlestown and Chelsea, devolved upon the city of Boston. By an act passed April 6, 1876, Boston was authorized to reconstruct that part of Chelsea bridge now maintained by it, in the manner following, to

¹ By an act passed June 5, 1863 (c. 309), the turnpike, way, bridges, draws and piers belonging to the Salem turnpike and Chelsea Bridge Corporation, were laid out as public highways, and the care and superintendence of Chelsea bridge devolved upon the cities of Charlestown and Chelsea.

wit: to increase the width of said bridge to sixty-six feet, so that ^{1876, c. 106, § 1.} it shall be thirty-three feet in width on each side of the centre of the present bridge; to fill solid to said width the portion between the Charlestown end in the former city of Charlestown to the harbor commissioners' line, and also the portion between the southerly sea-wall of the filled land of the Boston and Lowell Railroad Company, and the northerly sea-wall of the flats and filled land of the Mystic-river Corporation; to change the location of the draw therein, and to build suitable draw-piers and fenders, subject however to the provisions of chapter four hundred and thirty-two of the acts of the year one thousand eight hundred and sixty-nine.¹ In constructing the portions to be filled solid, the city of Boston shall have the option of building retaining walls, or bulkheads, or of sloping the sides to such an extent as may be necessary to build the roadway of the bridge to the width of sixty-six feet.²

41. The city of Chelsea was authorized to reconstruct that part ^{City of Chelsea may reconstruct part of Chelsea bridge. Ibid. § 2.} of Chelsea bridge now maintained by it in the manner following, to wit: to increase the width of said bridge to the extent and in the manner hereinbefore authorized to be done by the city of Boston; to fill solid to said width such portion of said bridge from the Chelsea end towards the draw as the harbor commissioners shall determine and permit to be filled, to the depth of not less than ten feet above mean low-water mark; to construct solid retaining walls for that purpose on both sides of said bridge, and, if said city of Chelsea shall so elect, to slope the westerly side instead of constructing said solid retaining wall; to change the location of the draw piers and to build suitable piers and fenders for said draw; all subject however to the provisions of said chapter four hundred and thirty-two.¹

42. To secure and accomplish the objects and purposes of the ^{May take land, buildings, wharves, etc. Ibid. § 3.} two preceding sections, said cities may severally take such lands, buildings, wharves and structures, as they deem necessary; and all damages to private property, or for land, buildings, wharves or structures taken under this act shall be ascertained as prescribed

¹ Act to protect the rights of the commonwealth in tide waters; p. 763, sup. to Gen. Sts.

² An order confirming the agreement with the parties in interest for the reconstruction of said bridge, was passed June 9, 1876, city records, vol. liv., pp. 611, 639, 662.

1876, c. 106, § 3. in chapter forty-three of the General Statutes, and be severally paid for by said cities: *provided, however*, that nothing herein contained shall be construed to compel payment for any land or property within the location of said bridge as originally laid out.

Material for
filling.
Ibid. § 4.

43. Other provisions of the act authorized the two cities to fill those portions of the bridge authorized to be filled solid, to the depth of ten feet above mean low-water mark, with material taken from flats or marsh between high and low-water mark at such place or places as shall be designated by the harbor commissioners, and in such case no other compensation for said filling shall be required from said cities; also to construct and maintain within their respec-

Footway during
reconstruction.
Ibid. § 5.

tive limits a foot-walk; but with no liability for damages for any injury suffered by any person while passing over said foot-walk, by reason of any defect therein; also to build a temporary structure for the passage of the cars of the Lynn and Boston Horse Railroad Company, but with no liability for any defect therein. It is provided that nothing contained in the act shall affect any obligation existing on the part of any person or corporation to keep in repair any portion of the bridge after the same shall have been rebuilt.

Passage of
horse-cars.
Ibid. § 7.

Duties of others
in the premises
not affected.
Ibid. § 6.

WEST BOSTON AND CRAGIE'S BRIDGES.

West Boston
bridge.
1792, c. 62.

44. The West Boston bridge was incorporated by the act of March 9, 1792, with the right to collect tolls for forty years, when the franchise was to revert to the commonwealth. By the act of June 30, 1792, this right was given for seventy years, and in 1807, upon the incorporation of the Canal bridge, the privilege was granted for seventy years from that date. The bridge was built and opened for travel in 1793.

Cragie's bridge.
1807, c. 88.

45. The Canal bridge, more familiarly known as Cragie's bridge, was incorporated by the act of February 27, 1807, the franchise to continue for seventy years, and then to revert to the commonwealth. The bridge was opened for travel in August, 1809, and continued a toll-bridge until 1858.

West Boston
bridge and
Cragie's bridge
surrendered to
city of Cam-

46. By an act passed May 30, 1857, the Hancock Free-bridge Corporation was authorized to surrender West Boston bridge and Canal bridge to the city of Cambridge, and pay to said city \$100,000; and thereupon said city was to assume the control and

management of the bridges, and maintain them as free avenues forever. This act was accepted by the city of Cambridge, and February 1, 1858, the West Boston bridge and Canal bridge were made free.

bridge, and made free. 1857, c. 257.

47. Under the provisions of chapter 302 of the acts of 1870, the supreme judicial court appointed three commissioners to apportion and assess upon the cities of Boston and Cambridge the expense of maintaining and keeping in repair West Boston and Cragie's, or Canal, bridges, and to divide the funds belonging to said bridges between the two cities. The commissioners having made their award, and the same having been accepted by the court, the city of Cambridge paid over to the city of Boston, in compliance therewith, the amount of funds apportioned thereunder; and the two cities then appointed, as further provided in the act, one commissioner on the part of each to have the care and management of the bridges and draws.¹

Commissioners appointed to apportion expense of maintaining bridges. 1870, c. 302.

Boston and Cambridge to support bridges and appoint commissioners.

48. It is provided in the act of 1870 that nothing shall release the Cambridge Railway Company or the Union Railway Company, from any legal obligation either of said companies is now under to the cities of Cambridge and Boston, or either of them, or any legal obligation now existing to maintain and keep in repair any portion of said bridges, or from any liability for any loss or injury that any person may sustain by reason of any carelessness, neglect, fault or misconduct of its agents or servants, in the construction, repair, management or use of its tracks on said bridges, or other use or occupation thereof.

Existing obligations of horse railway companies not affected. 1870, c. 302, § 8.

OTHER BRIDGES.

49. By the sixth section of an act passed June 9, 1868, entitled "an act for the improvement of the harbor of Boston, and the commonwealth's flats therein," the city of Boston was authorized to build and lay out as a public street, Eastern avenue, with a

City authorized to build Eastern avenue, now Congress-street bridge. 1868, c. 326, § 6.

¹ See Ordinance on Bridges, p. 82. By St. 1871, c. 250, the commissioners were authorized to dredge away a shoal opposite the southwesterly opening of the present draw-way of West Boston bridge, and the cities of Boston and Cambridge are required to maintain the depth of water secured by such dredging. By St. 1873, c. 199, the commissioners were authorized to build a new bridge, or repair and widen to a width not exceeding sixty-four feet, Cragie's or Canal bridge. The work having been completed the details of the act are omitted.

1868, c. 326, § 6. bridge over Fort Point channel, having suitable draws, said avenue and bridge to be located and constructed at such places, and upon such plans, and upon such terms and conditions as the harbor commissioners may make, the same to be subject to the approval of the governor and council.¹

Draw to be constructed in Prison Point bridge, and commissioners to be appointed by Cambridge and Boston. 1870, c. 300.

50. By an act passed June 1, 1870, the cities of Cambridge and Charlestown (now Boston) were directed to cause to be made in lieu of the existing draw in the Prison Point bridge over Miller's river, a draw with a clear opening of thirty-eight feet in width. For the purpose of constructing said draw it was provided that the city councils of said cities should each, in pursuance of such ordinances as they may respectively establish, elect one commissioner,² and said commissioner so chosen shall have the care and management of said draw. The expense of constructing and maintaining said draw, and keeping the same in repair, and of affording all necessary and proper accommodations to vessels having occasion to pass the same by day or night, shall be borne

¹ On the 24th of June, 1873, the city entered into an indenture with the commonwealth, the Boston and Albany Railroad Company and Boston Wharf Company, by which it became bound "to construct within eighteen months a bridge for public travel across Fort Point channel, in extension of Eastern avenue, and extend Eastern avenue to some existing street on the northwesterly side of Fort Point channel, substantially as said avenue is located on the plan annexed to the sixth annual report of the harbor commissioners; but at such a distance from the bridge of the Boston, Hartford and Erie Railroad, that the draws in both bridges may be operated without interference with one another, and be convenient for the passage of vessels, or in such manner, under section six of chapter three hundred and twenty-six of the acts of the year eighteen hundred and sixty-eight, that the extension of said avenue may form a convenient connection with Congress street;" also, after the work named in the indenture to be performed by the Commonwealth and the Boston and Albany Railroad has been completed, and within twelve months after the request of the harbor commissioners approved by the governor and council, "to build a bridge for public travel over Fort Point channel, in extension of Northern avenue, substantially as said avenue is located on the plan for the occupation of flats owned by the commonwealth in Boston harbor, annexed to the sixth annual report of said harbor commissioners to the legislature."

Eastern-avenue bridge was completed and opened to public travel in the latter part of 1875. By an ordinance passed May 22, 1876, it was named "Congress-street bridge."

² See ordinance §§ 11, 12 and 13, pp. 87, 88.

equally by said cities ; and said cities shall be jointly liable for all damages or injuries resulting from any defect in said draw, or from carelessness or neglect in management of the same. 1870, c. 300.

51. By an act passed April 1, 1874, it was provided that Malden bridge should thereafter be supported by, and be under the care and superintendence of, the city of Boston. Malden bridge to be maintained by Boston. 1874, c. 139.

52. By an act passed June 8, 1874, the cities of Boston and Cambridge are authorized to construct a bridge and avenue across Charles river from a point on Beacon street in Boston to a point in Cambridge west of the westerly line of the lands of the Boston and Albany Railroad. The location of said bridge and avenue shall be determined by the city councils of said cities, subject to the approval of the board of harbor commissioners, and subject moreover to this limitation, namely, that the line thereof shall not be northeast of a line drawn from the junction of Beacon street and West Chester park in Boston to the junction of Front street in said Cambridge, extended with said lands of the Boston and Albany Railroad ; nor southwest of a line from the junction of Beacon street, Brookline avenue and Brighton avenue, in Boston, to Putnam avenue at its junction with said lands of the Boston and Albany Railroad in Cambridge. Said bridge shall have a draw with a clear opening of at least thirty-six feet in width for the passage of vessels, and shall be constructed of iron resting upon stone piers and abutments, the plans to be approved by the harbor commissioners. The said cities are authorized to take lands for the purpose not exceeding one hundred feet in width. The expenses of construction and land damages are to be borne by each city for such part as lies within its own limits, and the expense of maintaining the bridge and draw is to be borne equally by the two. The bridge and avenue are to cross the Boston and Albany Railroad at such a grade as to leave a clear opening of eighteen feet. Unless the bridge is begun within three years from June 8, 1874, and completed within five years, the authority to act ceases. Boston and Cambridge may construct a new avenue and bridge. 1874, c. 314.

53. By an act passed April 15, 1874, the cities of Boston and Cambridge are authorized to lay out, make and maintain a new avenue from Brattle square in said Cambridge across Charles river to some point on Market street in ward nineteen in said Bridge between Boston and Cambridge. 1874, c. 175.

1874, c. 175.

Boston, and to build and maintain a bridge across said river which shall be a part of said avenue. Each of said cities may, within its own limits, take land for said avenue. Said bridge shall have a draw with a clear opening of thirty-eight feet for the free passage of vessels. Each of said cities shall bear the expense of laying out, making and maintaining that part of said avenue on its own side of the channel, but the expense of making, maintaining and operating said draw shall be borne equally by said cities. And the care and management of said bridge and draw shall be vested in the board of commissioners provided for in section six of chapter three hundred and two of the acts of eighteen hundred and seventy.¹

ORDINANCE.²

Names of
bridges, etc.
May 11, 1857.
Feb. 18, 1871.
July 13, 1874.
Dec. 11, 1875.

SECTION 1. The North Free bridge shall be hereafter called the Federal-street bridge; the South Free bridge shall be hereafter called the Dover-street bridge; the East Boston and Chelsea Free bridge shall be hereafter called the Chelsea street-bridge; the East Boston Free bridge shall be hereafter called the Meridian-street bridge; the bridge over Fort Point channel, connecting Mount Washington avenue, shall be called the Mount Washington-avenue bridge; the bridge over Fort Point channel, in extension of Broadway, shall be called the Broadway bridge; the easterly bridge connecting the old portion

¹ Relating to West Boston bridge and Cragie's bridge. For Atlantic avenue and Swett street (South Bay), see "Streets," p. 768. By an act passed 11th June, 1868 (chap. 352), the Maverick Bridge Company was authorized to erect a bridge over the water between the mainland in the city of Boston and East Boston. The act was repealed by chap. 155 of the acts of 1869.

² An ordinance relating to bridges, passed May 11, 1871; an ordinance to amend the same passed Feb. 18, 1871; an ordinance in relation to the care and maintenance of West Boston bridge and Cragie's bridge, passed May 19, 1871; an ordinance in addition to an ordinance relating to bridges, passed July 13, 1874; an ordinance in addition to an ordinance relating to bridges, passed Dec. 11, 1875; an ordinance in relation to Prison Point bridge, passed May 27, 1876.

of Boston with the Charlestown District shall be called the Charles-river bridge; the bridge next westerly of Charles-river bridge shall be called Warren bridge; the bridge over Mystic river between the town of Everett and the Charlestown District shall be called Malden bridge, and the bridge over Fort Point channel opposite the easterly end of Congress street shall be known as Congress-street bridge.

May 11, 1857.
Feb. 18, 1871.
July 13, 1874.
Dec. 11, 1875.

SECT. 2. There shall be elected annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of both branches of the city council, a superintendent of each of the bridges named in the preceding section. Each of said superintendents shall hold his office for one year from the first Monday of April in the year in which he shall be elected, and until his successor is elected and qualified. They shall be removable at the pleasure of the city council, and vacancies may be filled at any time for the remainder of the term. They shall receive such compensation as the city council may from time to time determine.

Superintendents to be appointed.
Ibid.

SECT. 3. It shall be the duty of each superintendent to take charge of the bridge of which he is chosen superintendent, by night and by day, and cause the draw thereof to be open at all times, when required for the free passage of vessels, and cause the same to be closed forthwith, and with all possible expedition, not permitting more than one vessel to pass at any one opening of the draw, unless the bridge shall be free of passengers while the draw is up, in which case he shall use his discretion as to the number of vessels

Duties of superintendents.
Ibid.

May 11, 1857.

to be permitted to pass, prior to the closing of the draw; and it shall also be within his discretion, to permit any vessel to pass through the draw, against the tide, when the wind is favorable. And each superintendent shall see that the bridge of which he is superintendent, and the abutments and wharves connected therewith, are at all times in a safe and satisfactory condition, and free from all incumbrances; the lamps thereon are well lighted, that the railing and planks are in good order, and the snow and ice removed from the sidewalks in winter; subject, at all times, to the authority, control, and direction of the board of aldermen for the time being, relative to the duties hereinbefore expressed, and also relative to any other duties respecting said bridges and wharves, and the abutments connected therewith, which the said board of aldermen may, from time to time, order and prescribe.

Assistant super-
intendents.
Ibid.

SECT. 4. The several superintendents above named may appoint their assistant superintendents, subject to the approval of the committee on bridges, and no assistant superintendent shall be authorized to act as such until his appointment is duly certified by the committee on bridges to the board of aldermen. And said assistant superintendents shall be compensated for their services out of the salary of the superintendent whose assistant he is, unless otherwise provided by the city council.

Penalties for
injuring bridges
etc.

SECT. 5. Any person or persons who shall deface, break or injure either of said bridges or wharves, or

shall unnecessarily open or obstruct the passage of May 11, 1857.
 either of the draws of said bridges, or shall make fast
 to such bridge, guard, or pier, any vessel, scow, raft,
 or float, or shall allow any vessel under his charge to
 pass through the draw without the consent of the
 superintendent of such bridge, shall, upon conviction
 thereof, pay a fine not less than three dollars, and not
 exceeding fifty dollars.¹

SECT. 6. The Board of Aldermen shall have author- Draw-tenders
to be appointed
for bridges
partly owned
by the city.
July 13, 1874.
 ity to appoint, on the part of the city of Boston,
 superintendents or draw-tenders of all those bridges,
 except West Boston bridge and Cragie's bridge,
 which are only in part controlled and maintained by
 the city of Boston, and may make suitable rules and
 regulations for their government. The compensation
 of the superintendents or draw-tenders so appointed
 shall be fixed by the city council.

WEST BOSTON BRIDGE AND CRAGIE'S BRIDGE.

SECT. 7. Annually in the month of March, the Appointment of
commissioner.
Compensation.
May 19, 1871.
 mayor and aldermen shall appoint a commissioner
 for the city of Boston on West Boston bridge and
 Cragie's bridge. He shall hold office for one year
 from the first Monday of May in the year in which he
 is appointed, and until his successor is appointed or
 he is removed. He may be removed at the pleasure
 of the mayor, and a vacancy may be filled at any

¹ Horses with street cars or other vehicles not to pass over any drawbridge
 at a gait faster than a walk. See "Carriages," *post*.

May 19, 1871.

time for the unexpired term. The compensation of said commissioner shall be at the rate of five hundred dollars per annum, payable monthly.

To act in concurrence with Cambridge commissioner. Ibid.

SECT. 8. The said commissioner for the city of Boston shall act in conjunction with the commissioner appointed by the city of Cambridge, and shall have and exercise all the powers in relation to the care and management of said bridges conferred by the three hundred and second chapter of the acts of the year eighteen hundred and seventy.

To make annual report. Ibid.

SECT. 9. The said commissioner shall annually, in the month of January, submit to the city council a report in writing, containing a particular account of the expenditures, the number of times the draws have been opened, and other matters of general interest in relation to said bridges, for the previous year ending on the thirty-first day of December; and annually, in the month of February, the said commissioner shall send to the auditor of accounts an estimate of the amount required on the part of the city of Boston to provide for the care and maintenance of said bridges for the financial year next ensuing.

To expend funds for support of bridges. Ibid.

SECT. 10. The city treasurer is hereby authorized and directed to receive from the city of Cambridge the funds for the care and maintenance of said bridges, payable to the city of Boston under the award of the commissioners, as provided in the three hundred and second chapter of the acts of the year

eighteen hundred and seventy; and the treasurer May 19, 1871. shall hold said funds, subject to the order of the city council, until the repairs upon said bridges required to be performed by the commissioners are completed, and the expense of said repairs paid out of said funds; and the remaining portion of said funds shall then be invested by the treasurer, under the direction of the commissioners on the sinking funds, in bonds of the city. The income from said bonds shall be set apart and accounted for as the income from said West Boston bridge and Cragie's bridge; and the auditor of accounts shall take said income into account in making up the estimates for the financial year.

PRISON-POINT BRIDGE.

SECT. 11. Annually, in the month of March or April, the city council shall elect a commissioner for the city of Boston, on Prison-Point bridge. He Commissioner of Prison-Point bridge to be elected. May 27, 1876. shall hold office for one year from the first Monday of May in the year in which he is elected and until his successor is elected or he is removed. Any commissioner may be removed, and any vacancy in the office of commissioner may be filled for the unexpired term, by the city council. The commissioner shall receive such compensation for his services as the city council may from time to time determine.

SECT. 12. The said commissioner of the city of Boston shall act in conjunction with the commissioner To act with Cambridge commissioner. Ibid. appointed by the city of Cambridge, and shall have

May 27, 1876.

and exercise all the powers in relation to the care and management of said bridge conferred by the three-hundredth chapter of the acts of the year 1870.

Commissioner
to make annual
report.
Ibid.

SECT. 13. The said commissioner shall annually, in the month of January, submit to the city council a report in writing, containing a particular account of the expenditures, the number of times the draw has been opened, and other matters of general interest in relation to said bridge, for the previous year ending on the thirty-first day of December; and annually, in the month of February, the said commissioner shall send to the auditor of accounts an estimate of the amount required on the part of the city of Boston to provide for the care and maintenance of said bridge for the financial year next ensuing.

BUILDINGS.

STATUTES.

CITY AND COUNTY BUILDINGS.

Care and custody of city property by city council.
S. C. Charter, p. 15, § 39.

1. The city council of the city of Boston shall have the care and superintendence of the public buildings, and the care, custody and management of all the property of the city, with power to lease or sell the same, except the common and Faneuil hall. And the said city council shall have power to purchase property, real or personal, in the name and for the use of the city, whenever its interest or convenience may in their judgment require it.¹

In county of Suffolk, public buildings to be

2. In the county of Suffolk, the court-houses, jails, house of correction, fire-proof offices, and all other necessary public build-

¹ By chapter 411, acts of 1869, cities and towns were authorized to take land for building or enlarging the town or city hall.

- ings for the use of the county, shall be provided by the city of Boston at its own expense. provided by Boston.
G. S. c. 17, § 6.
3. The board of aldermen, among other powers and duties of county commissioners, have authority to provide for the erecting and repairing of court-houses, jails, and other necessary public buildings, within and for the use of the county. Board of aldermen to provide for erecting and repairing county buildings.
G. S. c. 17, § 16.
4. The county commissioners of the several counties shall provide and maintain ample fire-proof rooms, with suitable alcoves, cases and boxes for the safe-keeping of all records, files, papers and documents belonging to the several registries of probate. Fire-proof rooms for registries of probate.
1876, c. 234, § 1
5. Whenever in the opinion of any judge of the supreme judicial court the accommodations provided for in the foregoing section are insufficient, he shall, on application of the judge or register of probate of any county, certify the need of additional accommodations to the county commissioners of the county from which the application comes, who shall thereupon proceed forthwith to provide such additional fire-proof rooms and other accommodations as shall be necessary. Additional rooms to be provided upon certificate of a judge of the S. J. C.
Ibid. § 2.
6. The board of aldermen of the city of Boston acting as county commissioners for the county of Suffolk, are hereby authorized and empowered to take and hold by purchase or otherwise, so much land as they may deem necessary, for the purpose of erecting thereon a court-house by the city of Boston, for the use of the county of Suffolk, and for a court-house yard for the same. Aldermen, as county commissioners of Suffolk, may take land for a court-house.
1867, c. 306, § 1.
7. The board of aldermen shall, within sixty days from the time when they shall take any parcel or parcels of land under this act, file in the office of the register of deeds for said county, and cause to be recorded, a description of the land so taken, as certain as is required in a common conveyance of land, with a statement of the purpose for which it is taken; which description and statement shall be signed by the mayor of the city; and the city of Boston shall be liable to pay all damages that shall be sustained by any person or persons by reason of the taking of such land as aforesaid; such damages to be ascertained and determined in the manner provided for ascertaining and determining damages in case of the laying out, altering or discontinuing of ways within the city of Boston; but the provisions of chapter one hundred and seventy-four of the acts of the year eighteen hundred and sixty- Shall file description and statement in registry of deeds.
Ibid. § 2.
Mayor to sign.
Liability of city for damages.
Stat. 1866, c. 174,
not to apply.

six shall not be applicable to any proceedings under this act.¹

Proceedings
when public
buildings are to
be erected.
1852, c. 266, § 4.

8. No erection, alteration, or repair of any court-house, jail, house of correction, fire-proof office, or any other building for the purposes of the county of Suffolk, shall be made by the mayor and aldermen of the said city, except as herein provided, to wit: whenever the mayor and aldermen shall by vote declare that such erection, alteration, or repair is necessary or expedient, they shall make and record an estimate of the expense thereof; and if such estimate shall exceed the sum of five thousand dollars, a copy of the said vote and estimate shall be sent to the common council for its concurrence, rejection or amendment; all acts or parts of acts inconsistent with this act are repealed.²

Wilful injury,
etc., to school-
house, church,
etc., or furni-
ture, etc., and
appurtenances
thereof.
G. S. c. 161, § 67.
See G. S. c. 161,
§§ 68, 69.

9. Whoever wilfully and maliciously, or wantonly and without cause, destroys, defaces, mars, or injures any school-house, church, or other building, erected or used for the purposes of education or religious instruction, or for the general diffusion of knowledge; or any of the out-buildings, fences, walls, or appurtenances of such school-house, church, or other building; or any furniture, apparatus, or other property belonging to or connected with such school-house, church, or other building, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the jail not exceeding one year.

Injury by oil of
vitriol, coal-tar,
etc.
G. S. c. 161, § 70.

10. Whoever wilfully and maliciously throws into, against, or upon any dwelling-house, office, shop, or other building or vessel, or puts or places therein or thereon any oil of vitriol, coal-tar, or other noxious or filthy substance, with intent unlawfully to injure, deface, or defile such dwelling-house, office, shop, building, or vessel, or any property therein, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail not exceeding three years, or by fine not exceeding three hundred dollars.

¹ Concerning the assessment of betterments.

² This act was accepted by the citizens of Boston, November 8, 1852.

INSPECTION OF BUILDINGS.¹

APPOINTMENT OF OFFICERS.

11. There is hereby created in the city of Boston an executive department, to be known and designated as the department for the survey and inspection of buildings, which shall have charge of enforcing the several provisions of this act. And the said department shall be provided with office room and all the necessary supplies for the proper transaction of its business.

Creation of department for survey and inspection of buildings.
1871, c. 280, § 1.

12. The chief officer of the said department for the survey and inspection of buildings shall be called the inspector of buildings. He shall be appointed by the mayor, and confirmed by the city council. He shall hold office for the term of three years, or until his successor shall take office, but may be sooner removed by the city council for malfeasance, incapacity or neglect of duty.

Inspector of buildings, how appointed.
Ibid. § 4.

13. The subordinate officers of the said department shall consist of a clerk, and such number of assistant inspectors as the city council may from time to time determine, all of whom shall be appointed by the inspector, with the approval of the mayor. The assistant inspectors and clerk shall hold office for the term of two years, but may be sooner removed by the inspector, with the approval of the mayor, for malfeasance, incapacity or neglect of duty.

Clerk and assistant inspectors, how appointed.
Ibid. § 5.

14. The inspector and assistant inspectors of the department for the survey and inspection of buildings in the city of Boston

Qualifications of officers.
1872, c. 371, § 25.

¹ The original act establishing the department for the survey and inspection of buildings (St. 1871, c. 280) was entitled "An act to provide for the regulation and inspection of buildings, the more effectual prevention of fire, and the better preservation of life and property in Boston." The acts in addition to, and for the amendment of, that act are the following: 1872, c. 260; 1872, c. 371 (passed at extra session); 1873, c. 298; 1873, c. 338; 1876, c. 69; 1876, c. 176. The other acts incorporated in this digest are as follows: St. 1872, c. 377 (§§ 30-32 of this digest): "An act to establish a grade in the city of Boston;" Gen. Sts. c. 87, §§ 1-5 (§§ 99-103 of this digest), relating to burnt and dilapidated buildings; St. 1810, c. 124, 1860, c. 109, 1869, c. 369; Gen. Sts. c. 88, §§ 31-32 (§§ 109-114 of this digest), relating to the location and erection of stables; St. 1863, c. 86 (§ 115 of this digest), concerning the removal of snow and ice from roofs of buildings.

1872, c. 371, § 25. shall be able and experienced architects, builders or mechanics, competent to perform all the duties of the office to which they are appointed, and such inspectors shall not be employed or engaged in any other vocation, or be interested in any contract or contracts for building or for furnishing materials.

Not to be engaged in other business.

DUTIES OF OFFICERS.

Duty of inspector of buildings.
1871, c. 280, § 7. 15. It shall be the duty of the inspector of buildings to sign all certificates and notices required to be issued under this act from said department. To make returns of all violations, except those mentioned in section fifty [§ 86 of this digest], to the city solicitor for prosecution. To have kept in proper books for that purpose a register of all transactions of said department. To submit to the city council a half-yearly statement in detail of such transactions. To enter upon the premises wherein any fire has occurred, if necessary, in order to investigate the origin of the fire. And further, to perform such other duties as are herein required of him. He shall also have a general supervision and direction over the subordinate officers of the department.

Power to pass upon questions.
1872, c. 371, § 22. 16. The inspector of buildings shall have full power to pass upon any question, arising under the provisions of this act, relative to the manner of construction, or materials to be used in the erection, alteration or repair of any buildings in the city of Boston,¹ and he may require that plans of the proposed erection, alterations or repairs shall be submitted for inspection before issuing his permit: *provided, however*, that should any question arise between the inspector of buildings, and the owner or architect of any building, or should the owner or architect object to any order or decision of said inspector, the matter shall be referred to a committee of three persons, who shall be either architects or master-builders, one to be chosen by the inspector of buildings, one by the owner or other interested party, and these two shall choose a third, and the decision of these referees, submitted in writing, shall be final and conclusive in the premises.

Reference to settle questions which arise between inspector and owner.

¹ See last three lines of § 24, *post*.

17. The assistant inspectors of buildings, if such officers are appointed, shall, under the direction of the inspector of buildings, attend all fires occurring in the districts to which they are respectively assigned, and report to the chief or assistant engineer of the fire department present all information they may have relative to the construction and condition of the premises on fire, and also any such information relating to the adjoining buildings.

Assistant Inspector to attend fires.
1871, c. 280, § 8.

18. The inspector or assistant inspectors shall examine all buildings in the course of erection, alteration or repair throughout the city as often as practicable, and shall make a record of all violations of any of the several divisions of this act, together with the street and number where such violations are found, the names of the owner, lessee, occupants, architect and master mechanics, and all other matters relative thereto.

Inspector and assistant inspectors to examine buildings.
Ibid. § 9.

It shall also be the duty of the inspector or assistant inspectors, to examine all buildings reported dangerous, or damaged by fire or accident, and to make a record of such examinations, including the nature and amount of such damage, with the name of the street and number of the building, the names of owner, lessee, and for what purpose occupied, and, in case of fire, the probable origin thereof; to examine all buildings under application to raise, enlarge, alter or build upon, and to make a record of the condition of the same. Said records shall always be open to the inspection of the engineers of the fire department, or any officer of the city.

19. In the absence of the inspector of buildings, one of the assistant inspectors may be appointed by him to act as his deputy, with the same powers exercised by him.

Deputy to be appointed in absence of inspector.
Ibid. § 10.

20. All the officers appointed under this act shall, so far as may be necessary for the performance of their respective duties, have the right to enter any building or premises in the city of Boston.

Right to enter buildings.
Ibid. § 11.

21. The compensation of the officers appointed under this act [St. 1871, c. 280] shall be fixed by the city council of Boston.

Compensation.
Ibid. § 12.

BUILDING LIMITS.

22. The city council of the city of Boston shall, within sixty days after the passage of this act, establish and define the limits within which all buildings thereafter erected shall conform to the

Building limits to be established.
Ibid. § 3.

1871, c. 280, § 3. provisions of this act; and said city council may, from to time, by ordinance,¹ extend and define the said limits as they may deem proper, due legal notice being giving thereof.

EXEMPTIONS.

Exemptions.
Ibid. § 13.

23. The following buildings and works shall be exempt from the operations of this act: —

1. Bridges, quays, wharves.

2. Buildings belonging to, or occupied by, the governments of the United States and the commonwealth of Massachusetts.

APPLICATION OF ACT.

Application of
act.
Ibid. § 14.

Alterations or
additions.
Ibid. § 15.

Buildings not to
be raised or
built upon in
violation of
provisions of
this act.
1872, c. 371, § 21.

24. With the exceptions hereinbefore or hereinafter mentioned, this act shall apply to all buildings hereafter erected within the building limits of the city of Boston, and to all tenement or lodging houses and all buildings built of brick, stone, or other non-combustible material, outside of the said limits, but within the city of Boston. Any work of alteration or addition made or done for any purpose in, to or upon any building, except that of necessary repairs not affecting the construction of the external or party walls, chimneys or stairways of a building, shall, to the extent of such work of alteration or addition, be subject to the regulations of this act. No building already erected or hereafter to be built in said city shall be raised or built upon in such manner that were such building wholly built or constructed after the passage of this act, it would be in violation of any of the provisions of this act. And before any building built of stone, brick or iron, or any wooden building with or without a brick front, in any part of said city, shall be enlarged, raised altered or built upon, the same shall be first examined by the said inspector, to ascertain if the building or buildings, or either of them, are in a good and safe condition to be enlarged, raised, altered or built upon; and no such building as aforesaid shall be enlarged, raised, altered or built upon until after

¹ See ordinance defining building limits, *post*, p. 137.

such examination and decision ; and the decision of said inspector 1872, c. 371, § 21.
under such examination shall be final and conclusive in the
premises, except as hereinafter provided,¹ and shall be made with-
out delay.

PERMITS FOR ERECTING BUILDINGS AND LOCATING STEAM BOILERS.

25. No building shall be erected hereafter in any part of the city Permits to build or alter to be obtained from inspector. 1871, c. 280, § 18.
of Boston, without a permit being first obtained from the inspector
of buildings ; and no addition or alteration to any building, sub-
ject to the regulations of this act, shall be made without a permit
from said inspector [and said inspector shall designate, in all per-
mits for the erection of new buildings, the grade below which the
floor of the basement story of said building shall not be laid].²

26. The inspector of buildings shall not give a permit for the Inspector to examine plans of halls, etc. Ibid. § 19.
erection of any building to be used for public assemblies, until he
has carefully inspected the plans and specifications thereof, and
ascertained that the building has sufficient strength, and that the
means of ingress and egress are sufficient ; and a copy of said
specifications shall be deposited in the office of said inspector. If Copy of speci-
fications to be deposited. Owner or archi-
tect may appeal from decision of inspector.
in any case the inspector shall see fit to prohibit the erection or
alteration of any building according to the plans as submitted, and
such decision shall appear to the owner or architect to be unreason-
able, the owner or architect shall have the right of appeal to a
committee of five experts, who shall be architects, engineers or
master-builders, two of whom shall be chosen by the said owner or
architect, and two by the inspector of buildings, the fifth one to be
chosen by the other four, and their decision shall be final.

27. Upon a license being granted by the mayor and board of Permit for erec-
tion of steam
boilers, etc., to
be obtained
from inspector.
1872, c. 371, § 18.
aldermen of the city of Boston for the erection of a steam boiler,
engine or furnace for melting glass, iron, or other metal, in any
building in the said city, the person or persons receiving said
license shall, before setting, erecting or placing, said boiler, engine,
or furnace, file an application for a permit therefor with the in-
spector of buildings, who shall prescribe such regulation for the

¹ See § 16, *ante*.

² Modified by chapter 377, laws of 1872. See §§ 30 and 32 of this digest.

1872, c. 371, § 18. setting or placing thereof as the public safety may require, and no person or persons shall erect, set, or place any boiler, engine, furnace or oven, without a permit from said inspector.¹

PENALTIES.

Penalties for violation of provisions of this act.

1872, c. 371, § 23.

1873, c. 298, § 10.

28. If any person or persons, whether owner or owners, contractor or contractors, builder or builders, shall begin to erect, construct, build or alter any building or structure within the city of Boston, without first obtaining a permit from the inspector of buildings of said city, such person or persons shall forfeit and pay the sum of not less than one hundred dollars nor more than one thousand dollars for each and every such offence; and if any person or persons, as aforesaid, shall proceed to complete any building or structure in the city of Boston, without having the same inspected as by law required, or shall violate any or either of the provisions of this act, or of the act of which this act is an amendment, or of any other act in amendment thereof, for the violation of which no other penalties are therein or herein before provided, he or they shall forfeit and pay not less than one hundred dollars and not more than one thousand dollars for each and every such violation, and the further sum of one hundred dollars for each and every week that he or they shall maintain any building or structure in violation of any provision of this act, or of the act of which this act is an amendment, or of any other act in amendment thereof.

Penalties may be recovered in an action of tort.

All penalties under this act shall be recoverable by the city of Boston in an action of tort. If any person or persons, whether owner or owners, contractor or contractors, builder or builders, shall erect or alter any building or structure in the city of Boston, in violation of any or either of the provisions of this act, or of the act of which this act is an amendment, or of any amendment thereof, or in violation of any ordinance enacted by the city council of the city of Boston, under authority given it by chapter two hundred and eighty of the laws of the year eighteen hundred and seventy-one, or of any law or laws in addition thereto or amendment thereof, it

¹ For provisions of act in relation to stationery engines, see "Steam engines," *post*. p. 731.

shall be lawful for the supreme judicial court, or any justice thereof, either in term-time or in vacation, to issue forthwith an injunction restraining such person or persons from further progress in said work, until the facts of the case shall have been investigated and determined; and if it shall appear to said court or to any justice thereof, upon such investigation, that such building or structure does not in all respects conform to the provisions of this act, and of the act of which this act is an amendment, and of all amendments thereof, said court or justice shall issue an injunction to restrain the continuance of the work upon such building or structure, and shall order the removal, within a time to be fixed by said court or justice, of so much of said building or structure as may be decreed by said court or justice to be in violation of the provisions of this act, or of the act of which this act is an amendment, or of any act in amendment thereof.

1873, c. 293, § 10.

Injunction may
be issued by
S. J. C.

S. J. C. may
order removal
of violations.

DEFINITION OF TERMS.

29. In the construction of this act [St. 1871, c. 280] if not inconsistent with the context, the following terms shall have the respective meanings hereinafter assigned to them:—

Definition of
terms.

1871, c. 280, § 2.

1873, c. 338, § 1.

“EXTERNAL WALL” shall apply to every outer wall or vertical enclosure of a building, other than a party wall.

External wall.

“PARTY WALL” shall apply to every wall used, or built, as a separation of any building from any other building, with the view to the same being occupied by different persons.

Party wall.

“FOUNDATION WALL” shall be understood to mean that portion of external walls below the level of the street curb, and for walls not on any street, that portion of the wall below the level of the ground outside of the wall.

Foundation
wall.

“PARTITION WALL” shall be understood to mean any interior wall of masonry in a building.

Partition wall.

A “TENEMENT HOUSE” shall be taken to mean and include every house, building or portion thereof which is rented, leased, let or hired out to be occupied, or is occupied as the house or residence of more than three families living independently of one another, and doing their cooking upon the premises, or by more than two families upon a floor, so living and cooking, but having a common

Tenement
house.

1871, c. 280, § 2. right in the halls, stairways, yards, water-closets or privies, or some of them.¹

Lodging house. A "LODGING HOUSE" shall be taken to mean and include any house or building, or portion thereof, in which persons are lodged for hire for a single night or for less than a week at one time.

Cellar. A "CELLAR" shall be taken to mean and include every basement or lower story of any building or house, of which one-half or more of the height from the floor to the ceiling is below the level of the street adjoining.²

GRADE OF CELLARS.

Grade of twelve feet above mean low water established. 30. The board of aldermen of the city of Boston shall establish in said city a grade not less than twelve feet above mean low water;³ and no person shall in said city, after such grade is established, construct any cellar or basement cellar of any dwelling-house or other building below such grade, or use or occupy any cellar or basement cellar constructed below the same: *provided*, that the board of aldermen may by license, subject to revocation at any time by them, authorize cellars to be constructed in buildings used exclusively for storage or business purposes, so much below said grade as they shall designate in each license.

Cellars not to be constructed below grade.
1872, c. 377, § 1.

Proviso.

Penalty.
Ibid. § 2.

31. If any person constructs, uses or occupies any cellar or basement cellar in violation of section one of this act, said board of aldermen shall order the owner or occupant of such cellar or basement cellar to so alter and construct it as to conform to the requirements of said section; and if such owner or occupant fails to comply with such order within ten days after service thereof, as provided by the following section, said board shall so alter such cellar or basement cellar; and all necessary expenses incurred thereby shall constitute a lien upon the land wherein such cellar or basement cellar is constructed, and upon the buildings upon such

¹ For special regulations concerning "Tenement-houses," see §§ 70 *et seq. post*.

² This definition cannot be held to apply to St. 1872, c. 377, which is covered by the three sections which follow.

³ Established by order of the board of aldermen, Dec 24, 1872, at twelve feet above mean low water.

land, and may be collected in the manner provided by law for the collection of taxes upon real estate; and the city treasurer of said city may purchase such land or land and buildings, in behalf of said city. 1872, c. 377, § 2.

32. All orders under the preceding section shall be made in writing, and served upon said owners or occupants, or their authorized agents, as prescribed by section nine of chapter twenty-six of the General Statutes, for the service of orders of boards of health; and the supreme judicial court, or any justice thereof, in term time or vacation, may by injunction, or other suitable process in equity, restrain any person or corporation from constructing, using or occupying any cellar or basement cellar in violation of the provisions of section one of this act [§ 30 of this digest], and may enforce such provisions, and may order and enforce the abatement or alteration of any cellar or basement cellar constructed, used or occupied in violation thereof, so as to comply with said provisions. Orders to be made in writing. Ibid. § 3. S. J. C. may restrain by injunction, etc.

PILES, CELLARS AND DRAINS.

33. Where piles are driven for a foundation, they shall be of suitable stock, and driven to a firm and solid bearing upon "hard pan," — to be ascertained by boring. Piles to be of suitable stock and driven to hard-pan. 1871, c. 280, § 24.

The tops of the piles shall be cut off on a level below the natural level of the water, as it stands in the ground during the summer months. Piles, tops to be cut off, etc.

It shall be the duty of the inspector of buildings to give the grades at which piles may be cut off. Inspector to give grade for cutting piles.

Buildings exceeding thirty-five feet in height shall have not less than two rows of piles under all external and party walls, and the piles shall be spaced not over three feet on centres in the direction of the length of the wall. Number of piles and how spaced.

34. All buildings hereafter built within the above limits shall have proper brick, iron or tile drains laid with air-tight joints, with a proper pitch to the city sewer, and shall be properly entered therein. Drains. Ibid. § 32.

All buildings built upon filled or made land shall have a bed of concrete, made of hydraulic cement and gravel, or tar and gravel, spread over the cellar bottom, or shall be paved with brick laid in Buildings on filled land to have cellar concreted.

1871, c. 280, § 32. cement, throughout the whole extent of the building; and, where
 Air-space be- there is a basement floor over the cellar bottom, leaving an air-
 tween floor and space between the concrete and said floor, the air-space shall be
 concrete. ventilated by an opening into a flue in the chimney of the
 building.

CONSTRUCTION OF BUILDINGS.

To be built of 36. Every building shall be built of brick, stone, iron, or other
 hard and in- hard and incombustible material, and with foundations resting
 combustibile upon the solid ground, not less than four feet below the surface
 material. exposed to frost, or upon concrete, piles, or other solid substructure.
 Ibid. § 20.

Walls to be Every wall constructed of brick, stone, or other similar substance,
 solidly built. shall be properly bonded and solidly built with mortar
 or cement.

The thickness of every wall, as hereinafter determined, shall be the minimum thickness as applied to solid walls.

Height of walls 37. The height of every external or party wall, as referred to
 to be measured in this act, or in the act of which this act is an amendment, or in
 from sidewalk. any act in amendment thereof, shall be measured from the level of
 1872, c. 371, § 3. the sidewalk to its highest point.

Calculations for 38. In all calculations for the strength of materials to be used
 strength of in any building, the proportion between the safe weight and the
 material. breaking weight shall be as one to three, for all beams, girders
 Ibid. § 9. and other pieces subjected to a cross strain, and as one to six, for
 all posts, columns and other vertical supports, and for all tie-rods,
 tie-beams, and other pieces subjected to a tensile strain; and the
 requisite dimensions of each piece of material are to be ascer-
 tained by computation by the rules given by the best authorities,
 using for constants in the rules only such numbers as have been
 deduced from experiments on materials of like kind with that
 proposed to be used.

WOODEN BUILDINGS.

Wooden ad- 39. No wooden or frame building shall hereafter be built
 ditions. within the said building limits of the city of Boston, except as
 1872, c. 280, § 1. hereinafter provided, and no wooden addition shall be made to
 any building within said limits which shall exceed fifteen feet in

height from the ground to the highest part thereof, or which shall exceed five hundred superficial feet in area; and not more than one wooden addition shall be allowed to be built to any building within the said building limits. No wooden building shall be moved from any lot outside of the said limits to any lot within the said limits. It shall be lawful to erect wooden or frame sheds, for storage or other purposes, upon wharves within the building limits of the city of Boston, upon the following conditions, namely: — Every such shed shall not exceed twenty-seven feet in height from the level of the wharf to the peak or highest point thereof. It shall be located and constructed in such a manner as the inspector of buildings may direct, and the roof and other external parts thereof shall be covered with non-combustible material, to be approved by said inspector.

1872, c. 260, § 1.

Sheds for storage may be built on wharves.

The city council of Boston may authorize the erection, within the building limits, of elevators for grain or coal to a height greater than twenty-seven feet, and of sheds for the storage of lumber and for mechanical purposes. The inspector of buildings may grant the privilege of erecting temporary sheds as building sites for the use of builders.

City council may authorize elevators, etc., within limits. Sheds at building sites.

The city council of the city of Boston shall have control and direction of the building of wooden buildings outside of said limits, but within said city, and may authorize such buildings upon such terms and conditions as they may deem expedient.¹

City council to control wooden buildings outside of limits.

40. It shall, however, be lawful for the owner, or other party interested, to make any necessary repairs upon any wooden or frame building already built, provided that the height of said building shall not be increased. It shall also be lawful to substitute for a pitch roof, a flat roof covered with metal or other non-combustible material. No building now erected, or hereafter to be erected, shall be altered, raised, roofed, enlarged or otherwise built upon in any manner contrary to the terms of this act.

Wooden buildings may be repaired.

1871, c. 280, § 17.

A flat roof may be substituted for pitch.

WALLS OF DWELLING-HOUSES.

41. For dwelling-houses with walls not exceeding thirty-five feet in height, foundation walls, laid with block stone in horizontal

Thickness of walls. Ibid. § 21.

¹ By St. 1873, § 4, the city was authorized to erect wooden buildings for hospital purposes. See "Health," *post*, p. 385.

1872, c. 371, § 2.
Walls not exceeding 35 feet in height.

courses, or in brick laid in cement, shall be not less than sixteen inches thick, and external and party walls of brick shall be not less than twelve inches thick for the entire height.

Exceeding 35 and not exceeding 55 feet.

For dwelling-house with walls exceeding thirty-five and not exceeding fifty-five feet in height, foundation walls laid with block stone in horizontal courses shall be not less than eighteen inches thick; if of brick, the foundation shall be sixteen inches thick, and laid in cement. External brick walls shall be not less than twelve inches thick; party walls of brick shall be not less than twelve inches thick for the entire height.

Exceeding 55 feet in height.

For dwelling-houses with walls exceeding fifty-five feet in height, foundation walls, laid with block stone in horizontal courses, or brick laid in cement, shall be not less than twenty inches thick. External and party brick walls shall be not less than twelve inches thick for the entire height.

Rubble work to be one-fourth thicker than block stone.

The thickness of foundation walls laid with irregular rubble work shall be one-fourth greater than the thickness given for block-stone walls.

Party walls of dwelling-houses in Boston.
1876, c. 176, § 1.

42. Party walls of dwelling-houses not exceeding two stories nor twenty-five feet in height, and not exceeding twenty feet in width and forty feet in depth, in the city of Boston, outside the building limits of said city, may be built of brick, eight inches thick, and be carried twelve inches above the roof; and shall be corbelled at least six inches, or to the outer edge of all projections on the front and rear walls of the building, and be coped with stone or metal securely fastened; and where the roof is of the kind known as Mansard or French, the party walls shall extend through the slope of the Mansard at least six inches distant from and parallel with the roof covering, and be corbelled at least six inches, or to the outer edge of all projections, and shall be coped with stone or metal, securely fastened. Any dwelling-house wall, not exceeding twelve feet in height from the foundation, and not within the building limits of said city, may be built of brick, eight inches thick.

WALLS OF BUILDINGS OTHER THAN DWELLING-HOUSES.

Thickness of walls.

1871, c. 280, § 22.

43. Buildings other than dwelling-houses shall have walls of the following thickness: —

For buildings in which the walls do not exceed thirty-five feet in height, the foundation walls may be built of irregular rubble-stone, one-fourth thicker than block-stone walls: *provided*, that when such foundation walls are laid on piles, the lower course shall be of block stone: the external walls shall not be less than sixteen inches thick to the top of the upper floor, and not less than twelve inches thick for the remaining height.

1872, c. 269, § 3.
1872, c. 371, § 1.
1873, c. 298, § 1.
1876, c. 176, § 2.
Walls not exceeding 35 feet in height.

For buildings in which the walls exceed thirty-five feet in height, the foundation walls shall be laid of block stone in horizontal courses not less than twenty-eight inches thick, the external walls not less than twenty inches thick to the top of the third floor, and not less than sixteen inches thick for the remaining height.

Exceeding 35 feet in height.

All party walls shall be not less than twenty inches thick to the top of the second floor above the street, and not less than sixteen inches thick to the underside of the roof boards, and not less than twelve inches thick for the remaining height.

Party walls.

In all buildings over twenty-five feet in width, not having either brick partition walls, or girders supported by columns running from front to rear, the external walls shall be increased four inches in thickness for every additional twenty-five feet in the width of said building.

Thickness of external walls to be increased in certain cases.

The bottom course for all foundation walls resting upon the ground shall be at least twelve inches wider than the thickness above given for the foundation walls.

Bottom course to be wider.

The amount of materials above specified for external walls may be used either in piers or buttresses: *provided*, the external walls between said piers or buttresses shall in no case be less than twelve inches thick. If adjoining owners, instead of a party wall, shall each at the same time erect a wall on his own land, such walls may be twelve inches each in thickness, to such height as they shall be contiguous.

Piers and buttresses.

44. The external walls of buildings intended to be used for stables or for workshops of a light character may be built of a less thickness than hereinbefore specified: *provided*, that any such building shall not exceed thirty feet in height to its highest point and forty feet in length or width, and that the said walls shall in no case be less than twelve inches thick.

Stables and workshops, external walls of.
1872, c. 371, § 4.

Vaulted party walls, thickness of and how constructed.
1872, c. 371, § 4.

45. Vaulted party walls may be used instead of solid walls. They shall be built at least twenty inches thick from the foundation walls to the underside of the roof boarding. Said walls shall be constructed of two outer walls of equal thickness, with an air-space between them of four inches, and tied together perpendicularly with continuous withes of hard-burned brick of good quality, which shall be not more than three feet apart. The air-space shall be smoothly plastered.

Partition walls.
Ibid. § 6.
1873, c. 298, § 3.

46. Every building hereafter erected, more than thirty feet in width, except churches, theatres, railroad-station buildings, and other public buildings, shall have one or more brick or stone partition walls running from front to rear, and carried up to a height not less than the top of the second-story floor joists; said wall or walls may be four inches less in thickness than is called for by the provisions relating to the thickness of walls; these walls shall be so located that the space between any two of the floor-bearing walls of the building shall not be over twenty-five feet.

Girders may be substituted for partition wall.

Iron or wooden girders, supported upon iron or wooden columns, or brick piers, may be substituted in place of partition walls, and shall be made of sufficient strength to bear safely the weight which they are intended to support, in addition to the weight of material employed in their construction, and shall have a footing course or leveller for each column not less than three feet six inches square, and one foot six inches thick.

If the girders resting on said columns are entirely of wood, said columns shall not be more than twelve feet apart on the line of the girders.

Hall partitions in tenement houses.

In any building hereafter to be erected, to be occupied as a tenement or lodging house, in which the lower part is intended to be used for business or manufacturing purposes of any kind, or which is intended to be occupied by more than four families, the hall partitions from the cellar to the second floor shall be built of brick.

Exterior walls faced with stone.
1871, c. 280, § 29.

47. Exterior walls, faced with stone, shall have a backing of not less than eight inches of hard brickwork laid in mortar. But in no case shall the thickness of stone and backing, taken together, be less than the thickness required for a brick wall of the same height.

The stone facing of a wall shall always be securely tied to the brick backing by means of metal clamps.

1871, c. 250, § 29.
Stone facing to
be securely tied.
Stone cornice to
balance on wall.

In all cases where a wall is finished with a stone cornice, the greatest weight of material of such cornice shall be on the inside of the face of the wall, so that the cornice shall firmly balance upon the wall.

48. In every brick wall, every ninth course of brick shall be a heading course, except in walls built with some bond in which as much as every ninth course is a heading course, and except where walls are faced with face brick, in which case every ninth course shall be bonded with Flemish header or by cutting the course of the face brick, and putting in diagonal headers behind the same, or by splitting face brick in half, and backing the same by a continuous row of headers.

In every brick
wall every ninth
course shall be a
heading course,
except, etc.
1872, c. 371, § 5.
1873, c. 298, § 2.

In all walls which are faced with thin ashlar, anchored to the backing, or in which the ashlar has not either alternate headers and stretchers in each course, or alternating heading and stretching courses, the backing of brick shall not be less than twelve inches thick, and each stone of said ashlar work shall be securely tied to the backing by one or more suitable metal anchors. All heading courses shall be good, hard, perfect brick.

Walls faced
with thin ashlar.

Heading
courses.

The backing in all walls, of whatever material it may be composed, shall be of such thickness as to make all walls, the facing of which is less than four inches thick, independent of the facing, conform, as to thickness, with the requirements of sections one and two of this act. [Chap. 371, 1872.]

Backing of
walls.

49. It shall not be lawful to erect, construct or build any rear, front, party, division or partition wall, upon wooden girders, rafters or lintels, or to support any such wall by any wooden support whatever; but all such supports shall be of iron, brick or stone, and of sufficient size and strength to support the superstructure.

Walls not to be
supported by
woodwork.
1872, c. 371, § 7.
1873, c. 298, § 4.

All lintels used to support walls, or other weights over openings, shall be of sufficient strength and bearing to carry the superimposed weight, and shall, when supported at the end by brick walls or piers, rest upon an iron plate at least two inches thick, the full size of the bearing.

Lintels to be
of sufficient
strength, etc.,
and to rest upon
iron plate.

1872, c. 371, § 7.

1873, c. 298, § 4.

No timber to be used in walls.

Side, end or party walls not to be carried up in advance of rear walls.

1872, c. 371, § 10.

Walls to be anchored to each other.

Walls to be anchored to beams.

Beams supported by girders to be butted together and strapped.

Mortar.

Party walls to be carried up above roof covering and corbelled out. Ibid. § 11.

Mansard or French roof.

No timber shall be used in any wall of any building, where stone, brick, or iron is commonly used, except arch forms for interior arched openings.

50. In no case shall the side, end or party wall of any building be carried up in advance of the rear walls.

The front, rear, side, end and party walls of any building hereafter to be erected, shall be anchored to each other every ten feet in their height, by tie anchors, made of at least one and a quarter inch by three eighths of an inch wrought iron.

The said anchors shall be built into the side or party walls not less than thirty-six inches; and into the front and rear walls at least one-half the thickness of the front and rear walls; so as to secure the front and rear walls to the side, end, or party walls.

The side, end or party walls shall be anchored at each tier of beams, at intervals of not more than ten feet apart, with good, strong, wrought-iron anchors, at least one-half inch by one and one-half inch, well-built into the side walls, and fastened to the top of the beams; and, where the beams are supported by girders, the ends of the beams resting on the girder shall be butted together, end to end, and strapped by wrought-iron straps or tie-irons, at the same distances apart, and in the same beams as the wall anchors, and shall be well fastened.

All mortar shall be of the best quality for the purpose for which it is applied.

51. All party walls shall be carried up to a height of not less than two and one-half feet above the roof covering, with the full thickness of the party wall, and shall be coped with stone or iron securely fastened. And where there is a flat, hip or pitch roof, the party wall shall be carried up to a height of not less than two and one-half feet above the roof covering, at every part of said roof, and shall be corbelled at least twelve inches, or to the outer edge of all projections on the front or rear walls of the building. And where the roof is of the kind known as Mansard or French, or of any style excepting as above specified, unless the same is constructed of fire-proof materials throughout, the party wall shall be carried up to a height of not less than two and one-half feet above the flat or upper slope of said roof, and shall extend through the lower slope, at least eighteen inches distant from and parallel with

the roof covering, and be corbelled out at least twelve inches, or to the outer edge of all projections, and shall be coped with stone or iron: *provided*, that if a gutter-stone of suitable dimensions and properly balanced shall be inserted, it shall be equivalent to corbelling.

1872, c. 371, § 11.

Gutter stone may be used.

52. Recesses and openings may be made in external walls, provided the thickness of the backs of such recesses be not less than eight inches, and provided the whole area of all the recesses and openings in any wall do not exceed one-half of the area of said wall.

Recesses and openings in walls.

1871, c. 280, § 25.

Whenever it becomes desirable to cut a doorway through any party wall separating two buildings, a notice of the intention to do so shall be filed with the inspector of buildings.

Doorways in party walls.

Any such doorway shall not exceed ten feet in height by eight feet in width, and shall have top, bottom and sides of stone, brick or iron.

Size of doorway.

The said doorway shall be closed by two sets of wrought-iron or metal-covered doors, hung to rebated iron frames, and separated by the thickness of the wall. And whenever such doorway ceases to be used, it shall immediately be filled up with masonry.

Doors to be iron or metal-covered.

No continuous vertical recess of more than four inches in depth shall be made in any twelve-inch party wall, and no recess of any kind shall be made in any eight-inch party wall.

No continuous vertical recess to exceed four inches in depth.

PIERS, COLUMNS, ETC.

53. All piers shall be built of good, hard, well-burnt brick, and laid in clear cement, and all bricks used in piers shall be of the hardest quality, and be well wet when laid.

Piers to be of good hard brick, and laid in clear cement.

1872, c. 371, § 8.
1873, c. 298, § 5.

Isolated brick piers under all lintels, girders, iron or other columns shall have a cap-iron at least two inches thick, or a granite cap-stone at least twelve inches thick, the full size of the pier.

Isolated piers to have cap iron.

In the case of an external brick pier, the plate may be reduced sufficiently in size to allow four inches of brickwork to intervene between the edge or edges of the plate, and the face or faces of the pier exposed to the weather.

1872, c. 371, § 8.
1873, c. 298, § 5.
Columns to rest
upon iron plate
or granite cap-
stone.

Columns supported by brick walls or piers shall rest upon an iron plate at least two inches thick, or upon a granite capstone at least twelve inches thick, of a size satisfactory to the inspector of buildings.

Under iron columns shall in all cases be an iron plate of not less than one and one-half inches in thickness.

Footing course
for piers or col-
umns support-
ing walls.
1871, c. 280, § 23.

54. Piers or columns supporting walls of masonry shall have for a footing course a broad leveller, or levellers, of block stone not less than sixteen inches thick, and with a bearing surface equal in area to the square of the width of the footing course, plus one foot required for a wall of the same thickness and extent as that borne by the pier or column.

Pile foundation
for piers and
columns.

And if the foundation of such piers or columns rests upon piles, a sufficient number shall be driven to insure a proper support.

FLOOR-BEAMS, PARTITIONS, ETC.

Floor beams not
to be wholly
supported upon
wooden parti-
tions.
1872, c. 371, § 7.
1873, c. 298, § 3.

55. No floor-beams shall be supported wholly upon any wood partition, but every beam (except headers and tail-beams) shall rest at one end, not less than four inches in the wall, or upon a girder, as authorized by this act. And every trimmer or header more than four feet long, used in any building except a dwelling, shall be hung in stirrup irons, of suitable thickness for the size of the timbers.

Ends of floor-
beams and
rafters to be
eplayed.

The butts or ends of all floor-beams and rafters entering a brick wall shall be cut on a splay of three inches in their width.

Main partitions
supporting the
floor to be
placed over
each other.

All main partitions supporting in any manner the floor-beams or rafters shall be placed directly over each other, and shall rest on a wall, girder or hard-pine capping, and shall head and foot against each other as far as practicable.

Brickwork be-
tween roof and
floor timbers.
1872, c. 371, § 11.

56. All roof or floor timbers, entering the same party wall from opposite sides, shall have at least four inches solid brickwork between the ends of said timbers.

ROOFS, ROOFING MATERIALS, ETC.

Roofing mate-
rials.
1871, c. 280, § 30.

57. All buildings hereafter built shall be roofed with slate, tin, or other non-combustible roofing material ; and all buildings shall

have a scuttle not less than two by three feet, with a permanent step-ladder or flight of stairs thereto.

All buildings to have scuttles.
1871, c. 280, § 30.

58. No Mansard or other roof shall be constructed more than one story in height, nor more than twenty feet in height from the upper floor of the building upon which it is placed to the highest part of said roof, unless the same is constructed of fire-proof material throughout.

No roof to be more than one story in height.
1872, c. 371, § 19.

No bay window shall be constructed of wood, which shall extend more than three feet above the second story from the street.¹

Bay windows made of wood.

All the exterior parts of any building or buildings hereafter erected which are more than forty-five feet above the level of the sidewalk, shall be made of or covered with non-combustible material, to be approved by the inspector of buildings.

Exterior walls of buildings more than 45 feet above sidewalk, to be of non-combustible materials.

All fire-proof cornices shall be well secured to the wall with iron anchors, independent of any woodwork; and in all cases the walls shall be carried up to the planking of the roof, and, where the cornice projects above the roof, the wall shall be carried up to the top of the cornices, and all exterior wooden cornices that shall hereafter require to be replaced shall be constructed of some non-combustible material, as required for new buildings; and all exterior wooden cornices or gutters that may hereafter be damaged by fire shall be taken down, and if replaced shall be constructed of fire-proof material.

Fire-proof cornices.

All buildings hereafter erected shall be kept provided with proper metallic leaders for conducting the water from the roof to the ground, sewer or street gutter, in such manner as shall protect the walls and foundations from damage; and in no case shall the water from the said leaders be allowed to flow from the sidewalk, but shall be conducted by drain pipe or pipes, to the street gutter or sewer.

Metallic leaders for conducting water from roof to the ground.

Water not to be allowed to flow upon sidewalk.

59. All buildings hereafter erected or increased in height, except churches and grain-elevators, shall not exceed a height greater than eighty feet to the highest point from the level of the sidewalk, exclusive of chimneys and party walls above the roof: *provided, however*, that an additional height may be added, if said

Regulations respecting fire-proof roofs.
1873, c. 298, § 9.

¹ See "Streets," p. 761—section concerning projection of bow-windows.

1873, c. 298, § 9. addition shall be constructed in a fire-proof manner, as herein named, to wit: All joists, beams, rafters, purlines, jack-rafters, plates, studs, ties and arches shall be made of cast or wrought iron, or some other metal, stone, brick, cement, mortar, or other incombustible material, and covered with corrugated iron, sheet or cast iron, tin, copper, zinc, or other metal, or slate, stone, brick, cement, mortar, or other incombustible material. All structures or projections above or outside of the roof, such as domes, cupolas, pavilions, towers, spires, pinnacles, buttresses, lanterns, louvres, luthern or dormer windows, sky-lights, scuttles, ventilators, cornices and gutters, shall be made, constructed, framed and covered with cast or wrought iron, tin, copper, zinc, or other metal or stone, slate, brick, cement or mortar, or other incombustiible material.

Scuttle-frames and covers, in all buildings in Boston, to be fire-proof. 1872, c. 371, § 15.

Scuttles to have stationary ladders.

Bulkhead to have stairs.

Doors to bulkhead or scuttle, in tenement houses, not to be locked.

60. All buildings in the city of Boston, hereafter to be built, shall have scuttle-frames and covers, or bulkheads and doors on the roof, made of or covered with some fire-proof material, and all scuttles shall have stationary ladders leading to the same, and all such scuttles or ladders shall be kept so as to be ready for use at all times, and all scuttles shall not be less in size than two by three feet; and if a bulkhead is used or substituted in any building in place of a scuttle, it shall have stairs with a sufficient guard or hand-rail leading to the roof; and in case the building shall be a tenement house, the door in the bulkhead, or any scuttle, shall at no time be locked, but may be fastened on the inside by movable bolts or hooks.

CHIMNEYS, FLUES, AND HEATING APPARATUS.¹

Chimneys, material of. 1871, c. 280, § 31. Flues to be plastered.

Brick flues to be hung to walls. Chimneys not

61. All chimneys shall be built of brick, stone or other fire-proof non-conducting material. All brick flues shall be smoothly plastered inside with mortar from top to bottom and outside below the roofing.

Brick flues, not starting from the foundation walls, shall be securely built into the brickwork of the walls to which they are hung. In no case shall chimneys rest upon any flooring without a

¹ See ordinance in relation to "chimneys and chimney-sweepers," p. 195.

footing of masonry or iron supported by iron beams, having a secure bearing on masonry or iron at either end.

to rest upon floorings.
1871, c. 280, § 31.

All flues shall be topped out at least four feet above the roof of the building to which they belong. The brick topping out of chimneys shall not have more than two inches projection, unless covered by a cap of metal or stone properly secured.

Flues to be topped out 4 ft. above roof.

Hearths of fire-places or grates shall be laid upon brick or other trimmer arches, or upon bars of iron supporting a bed of brick-work.

Hearths, how laid.

No woodwork of any kind shall be placed at a less distance than one inch from the outside brickwork of any flue. In no case shall a nail be driven into the masonry of any flue.

No woodwork to be placed within one inch of flues.
Nails not to be driven into flues.

62. No smoke-pipe in any building with wooden or combustible floors or ceilings shall hereafter enter any flue unless the said pipe where it enters the flue shall be at least twelve inches from either the floors or ceilings; and in all cases where smoke-pipes pass through stud or wooden partitions of any kind, whether the same be plastered or not, they shall be guarded by a soapstone ring, not less than four inches in thickness, and extend through the partition. In all cases where hot-water, steam, hot-air or other furnaces are used, the furnace smoke-pipe must be kept at least two feet below the beams or ceiling above the same, unless said beams or ceiling shall be properly protected by a shield or tin plate suspended at least one inch below said beams or ceiling above said smoke-pipe; and the top of all furnaces set in brick must be covered with brick, supported by iron bars, and so constructed as to be perfectly tight; said covering to be in addition to and not less than six inches from the ordinary covering to the hot-air chamber. If, however, there is not height enough to build the furnace-top at least four inches below the floor-beams or ceilings, then the floor-beams must be trimmed around the furnace, and said covering and the trimmers and headers must be at least four inches from the same. The top of every portable furnace not set in brick shall be kept at least one foot below the beams or ceiling with a shield of tin plate, made tight, and suspended not less than one inch below the said beams or ceilings, and extended one foot beyond the top of the furnace on all sides. All hot-air registers hereafter placed in the floor of any building shall be set in soapstone borders not

Regulations concerning smoke-pipes.
1872, c. 371, § 16.
1873, c. 288, § 7.

Portable furnaces to have shield.

1872, c. 371, § 16.
1873, c. 298, § 7.

Registers to be
set in soapstone
borders.

Open space
around regis-
ter boxes.

less than two inches in width. All soapstone borders to be firmly set in plaster of Paris or gauged mortar. All floor register boxes to be made of tin plate, with a flange on the top to fit the groove in the soapstone, the register to rest upon the same. There shall also be an open space of one inch on all sides of the register box, extending from the underside of the ceiling, below the register, to the soapstone in the floor; the outside of said space to be covered with a casing of tin plate, made tight on all sides, to extend from the underside of the aforesaid ceiling up to and turn under the said soapstone. Registers of fifteen by twenty-five inches or more, shall have a space of two inches.

No woodwork
to be placed
within one inch
of hot-air pipes,
unless pro-
tected.

No woodwork shall be placed at a less distance than one inch from any tin or other metal flue or flues, pipe or pipes, used or intended to be used to convey heated air in any building, unless protected by a soapstone or earthen ring or tube, or a metal casing so constructed as to permit free circulation of air around said pipes or flues.

Notice of inten-
tion to place
furnaces in
buildings to be
given to inspec-
tor of buildings.

In all cases where hot-water, steam, hot-air or other furnaces or ranges, are hereafter placed, or their location changed, in any building, due notice shall first be given to the inspector of buildings, by the person or persons placing said furnace or ranges in said building.

Flues of ranges
or boilers to be
plastered di-
rectly upon the
bricks.

In all cases where ranges or boilers are set, the outside of the flue to the same shall be plastered on the outside directly upon the bricks, up to the ceiling of the room, and no woodwork shall be placed on the outside thereof.

Owner of
building in
Boston to be
notified by in-
spector if
chimney, etc.,
is unsafe.
1872, c. 371, § 17.
Penalty for re-
fusal to make
safe.

63. If any chimney, flue or heating apparatus on any premises in the city of Boston, shall in the opinion of the inspector of buildings be dangerous or unsafe, by reason of endangering the premises by fire or otherwise, the inspector shall at once notify in writing the owner, agent or other party having an interest in said premises, and shall require him to make the same safe; and upon neglect of said person so notified to comply with the provisions of said notice for a period of twenty-four hours after the service of said notice upon him, he shall at once become liable to a penalty of not less than twenty nor more than fifty dollars for every day's continuance of said unsafe structure.

BOILER ROOMS.

64. All boiler rooms hereafter constructed in any building other than dwelling-houses shall be constructed of brick and iron, and shall be so arranged that all openings between the said boiler room, and other parts of the building in which it is placed, shall be closed by iron or metal-covered doors, which shall be securely closed at the close of each day. All flues for ranges, boilers, furnaces and ovens, shall be of brickwork, eight inches in thickness, to a height of twenty-five feet above such ranges, boilers, furnaces or ovens.

Boiler rooms and engine room.
1872, c. 371, § 18.
1873, c. 298, § 8.

Flues to be 8 inches thick.

FIRE-PROOF DOORS, SHUTTERS, ETC.

65. All stores or storehouses that may hereafter be built in said city, which are more than forty-five feet in height above the curb level, shall have doors, blinds or shutters made of fire-proof metal, on every window and entrance where the same do not open on a street. When in any such building the shutters, blinds or doors cannot be put on the outside of such door or window, they shall be put on the inside, and if placed on the inside shall be hung upon an iron frame independent of the woodwork of the window-frame or door; and every such door, blind or shutter shall be closed upon the completion of the business of each day by the occupant having the use or control of the same; and all fire-proof shutters or blinds, that now are or may hereafter be put upon the front or sides of any building on the street fronts, must be so constructed that they can be closed and opened from the outside above the first story.

Fire-proof doors, blinds, and shutters.
1872, c. 371, § 12.

How hung.

Shutters to be closed at close of business for the day.

HOISTWAYS.

66. In any store or building in Boston, in which there shall exist or be placed any hoistway, elevator or well-hole, the openings thereof through and upon each floor of the said building shall be provided with and protected by a good and substantial railing, and such good and sufficient trap-doors with which to close the same, as may be directed and approved by the inspector of buildings; and such trap-doors shall be kept closed at all times except when in actual use by the occupant or occupants of the building having the use and control of the same. For any neglect or violation of

Hoistways, elevators and well-holes to be protected.
1872, c. 260, § 5.

1872, c. 260, § 5. the provisions of this section, a penalty not exceeding one hundred dollars for each and every offence may be imposed upon the owner, lessee or occupant of said building.

CHURCHES, THEATRES, SCHOOL-HOUSES, ETC.

Churches, school-houses, etc., reported to be deficient in modes of egress in case of fire, to be examined by inspector of buildings.
1876, c. 69, § 1.

Owner or occupant to make alterations when notified by inspector.

Supreme judicial court may enjoin owners, etc., from using premises, upon a report of a board of survey.

67. Whenever it shall be reported to the inspector of buildings of the city of Boston, that any church, theatre, hall or other building or structure, used or intended to be used temporarily or permanently for any public purpose, or any school-house or school-room, public or private, within the city of Boston, is deficient in proper facilities of egress in case of fire or accident, either in the number, width, construction or arrangement of the entrances, aisles, passageways or stairways, or by reason of inner doors opening inward, or from any other cause whatever, arising from the manner of construction or repair of the premises, it shall be the duty of the said inspector of buildings to inspect the same, and if, in his judgment, they are so deficient, he shall notify the owner or owners, occupant, lessee or other person having charge thereof, and require of him or them such increased facilities of egress, as, in the judgment of the inspector, the security of the public in life and limb, in case of fire or accident, may require. The person or persons so notified shall be allowed forty-eight hours from the time of the service of the notice to begin the alterations required by the notice; and he or they shall employ sufficient labor to accomplish the same as expeditiously as may be. If he or they shall refuse or neglect to comply with the requirements of said notice as aforesaid, then a survey of the premises shall be made in the manner set forth in the thirteenth section of chapter two hundred and ninety-eight of the acts of the year eighteen hundred and seventy-three. Upon the report of the board of survey, if the same shall declare that said premises are deficient in proper facilities of egress in case of fire or accident, and upon the continued neglect or refusal of the owner or owners, occupant, lessee or other person having charge thereof, to provide the requisite increased facilities of egress, then it shall be lawful for the supreme judicial court to issue an injunction forbidding or limiting the use of the premises in such manner as the safety of the public or of

persons using the same may require. Such owner or owners, occupant, lessee or other person having charge of the premises, shall likewise be liable to a penalty of not less than ten dollars nor more than fifty dollars, for every day's continuance of neglect or refusal to comply with the original notice of the inspector of buildings, to be recovered by the city of Boston in an action of tort.

1876, c. 69, § 1.
Penalty for neglecting to make necessary alterations.

68. Whenever it shall appear to the inspector of buildings of the city of Boston that in any of the buildings or structures, or portions thereof, mentioned in the foregoing section, the security of the public is either temporarily or permanently endangered by the use of combustible stuff or materials; or that benches, chairs, stools or other obstructions, are either temporarily or permanently placed in the aisles or passageways thereof, in such a manner as to prevent free egress in case of fire or accident, during the time when the same may be opened to the public; or that benches, chairs or settees are either temporarily or permanently so arranged as not to afford proper passage between them and sufficient egress in case of fire or accident; or that outer doors opening inward are not kept open when such buildings or structures are used by the public; the said inspector shall notify the owner or owners, lessee, occupant or other person having charge of the premises, and require him or them to make the premises safe, and if he or they shall refuse or neglect to do so, he or they shall be liable to a penalty of not less than fifty dollars nor more than five hundred dollars, for each offence, to be recovered by the city of Boston in an action of tort.

Combustible materials in buildings, and obstructions in passageways to be made safe, upon order of the inspector.
Ibid. § 2.

Penalty for neglect.

69. All outer doors of buildings and structures mentioned in section one of this act [§ 67 of digest] shall be kept open when such buildings or structures are used by the public, unless such doors open outwards and except that fly-doors opening both ways may be kept closed. All inner doors of such buildings and structures shall be made so as to open outwards.

Outer doors opening inward, to be kept open while buildings are used by the public.
Ibid. § 3.

TENEMENT OR LODGING HOUSES.

70. No house, building, or portion thereof, in the city of Boston, used, occupied, leased or rented for a tenement or lodging house, shall continue to be so used, occupied, leased or rented,

Houses to conform to rules.
1871, c. 280, § 34.

1871, c. 280, § 34. unless the same, on the requisition of the board of health, shall conform in its construction and appurtenances to the provisions of this act.

Inspector of buildings to see that requisitions of board of health are carried out. Plans to be approved by inspector.

And the inspector of buildings shall see that the requisitions of the board of health in regard to the repair and alterations of tenement or lodging houses are properly carried out; and shall approve all plans for the construction of new tenement or lodging houses.

Right of owner or architect to appeal, if plans are not approved.

If in any case the inspector shall see fit to prohibit the erection of the building according to the plan, the owner or architect shall have the right of appeal, as provided in section nineteen [§ 26 of this digest].

Exterior wall, heights, etc. Ibid. § 35.

71. The exterior walls of all tenement or lodging houses hereafter erected shall be of brick or stone; and those hereafter erected on streets not more than twenty feet in width shall not exceed thirty feet in height.

To be ventilated. Ibid. § 36.

72. Every house, building, or portion thereof, in the city of Boston, designed to be used, occupied, leased or rented, or which is used, occupied, leased or rented for a tenement or lodging house, shall have in every room which is occupied as a sleeping-room, and which does not communicate directly with the external air, a ventilating or transom window, having an opening or area of three square feet over the door leading into and connected with the adjoining room, if such adjoining room communicates with the external air; and also a ventilating or transom window, of the same opening or area, communicating with the entry or hall of the house, or where this is, from the relative situation of the rooms, impracticable, such last-mentioned ventilating or transom window shall communicate with an adjoining room that itself communicates with the entry or hall. Every such house or building shall have in the roof, at the top of the hall, an adequate and proper ventilator, of a form approved by the inspector of buildings.

Ventilator in roof.

To have fire-escape. Ibid. § 37.

73. Every such house shall be provided with a proper fire-escape, or means of escape in case of fire, to be approved by the inspector of buildings.

Roofs to be kept in repair. Ibid. § 38.

74. The roof of every such house shall be kept in good repair and so as not to leak, and all rain-water shall be so drained or conveyed therefrom as to prevent its dripping on ground or causing dampness in the walls, yard or area.

All stairs shall be provided with proper balusters or railings, and shall be kept in good repair. 1871, c. 280, § 38
Stairs to be kept in repair.

75. Every such building shall be provided with good and sufficient water-closets, earth-closets or privies, of a construction approved by the inspector of buildings, and shall have proper doors, traps, soil-pans and other suitable works and arrangements, so far as may be necessary to insure the efficient operation thereof. Such water-closets or privies shall not be less in number than one to every twenty occupants of said house; but water-closets and privies may be used in common by the occupants of any two or more houses: *provided*, the access is convenient and direct; and *provided*, the number of occupants in the houses for which they are provided shall not exceed the proportion above required for every privy or water-closet. Every such house, situated upon a lot on a street in which there is a sewer, shall have the water-closets or privies furnished with a proper connection with the sewer, which connection shall be in all parts adequate for the purpose, so as to permit entirely and freely to pass whatever enters the same. Such connection with the sewer shall be of a form approved by the inspector of buildings, and all such water-closets and vaults shall be provided with the proper traps, and connected with the house-sewer by a proper tight-pipe, and shall be provided with sufficient water and other proper means of flushing the same; and every owner, lessee and occupant shall take due measures to prevent improper substances from entering such water-closets or privies or their connections, and to secure the prompt removal of any improper substances that may enter them, so that no accumulation shall take place, and so as to prevent any exhalations therefrom, offensive, dangerous or prejudicial to life or health, and so as to prevent the same from being or becoming obstructed. No cess-pool shall be allowed in, or under, or connected with any such house except when it is unavoidable, and in such cases it shall be constructed in such situation and in such manner as the inspector of buildings may direct. It shall in all cases be water-tight, and arched or securely covered over, and no offensive smell or gases shall be allowed to escape therefrom, or from any privy or privy vault. In all cases where a sewer exists in the street upon which the house or building stands, the yard or area shall be so connected 1871, c. 280, § 38
Water-closets, earth-closets and privies.
Ibid. § 39.

Provisos.

To be connected with sewer.

To have traps.

Owner to prevent improper substances from entering water-closets.

Cesspools.

Yard or area to be connected with sewer.

1871, c. 280, § 39. with the same that all water, from the roof or otherwise, and all liquid filth, shall pass freely into it. Where no sewer exists in the street, the yard or area shall be so graded that all water, from the roof or otherwise, and all filth, shall flow freely from it, and all parts of it, into the street gutter, by a passage beneath* the sidewalk, which shall be covered by a permanent cover, but so arranged as to permit access to remove obstructions or impurities.

Cellars not to be occupied as dwellings without permit. Ibid. § 40.

Regulations concerning cellars when occupied as dwellings.

76. From and after the passage of this act it shall not be lawful, without a permit from the board of health, or superintendent of health, to let or occupy, or suffer to be occupied, separately as a dwelling, any vault, cellar or underground room, built or rebuilt after said date, or which shall not have been so let or occupied before said date. And it shall not be lawful, without such permit, to let or continue to be let, or to occupy, or suffer to be occupied, separately as a dwelling, any vault, cellar or underground room whatsoever, unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof; nor unless the same be for at least one foot of its height above the surface of the street or ground adjoining, or nearest to the same; nor unless there be outside of and adjoining the said vault, cellar or room, and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof, up to the surface of the said street or ground, an open space of at least two feet and six inches wide in every part; nor unless the same be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor of such vault, cellar or room; nor unless there is a clear space of not less than one foot below the level of the floor, except where the same is cemented; nor unless there be appurtenant to such vault, cellar or room; the use of a water-closet or privy, kept and provided as in this act required; nor unless the same have an external window-opening of at least nine superficial feet clear of the sash frame, in which window-opening there shall be fitted a frame filled in with glazed sashes, at least four and a half superficial feet of which shall be made so as to open for the purpose of ventilation; *provided, however*, that in case of an inner, or back vault, cellar or room, let or occupied along with a front vault, cellar or room, as a part of the same letting or occupation, it shall

Provisos.

be a sufficient compliance with the provisions of this act, if the front room is provided with a window as hereinbefore provided, and if the said back vault, cellar or room is connected with the front vault, cellar or room by a door and also by a proper ventilating or transom window, and, where practicable, also connected by a proper ventilating or transom window, or by some hall or passage, or with the external air: *provided always*, that in any area adjoining a vault, cellar or underground room, there may be steps necessary for access to such vault, cellar or room, if the same be so placed as not to be over, across or opposite to said external window, and so as to allow between every part of such steps and the external wall of such vault, cellar or room, a clear space of six inches at least, and if the rise of said steps is open; and *provided, further*, that over or across any such area there may be steps necessary for access to any building above the vault, cellar or room, to which such area adjoins, if the same be so placed as not to be over, across or opposite to any such external window.

77. From and after the passage of this act, no vault, cellar or underground room, in any tenement or lodging house, shall be occupied as a place of lodging or sleeping, except the same shall be approved in writing, and a permit given therefor by the board of health or superintendent.

Cellars not to be occupied for lodging, etc., without permit from board of health.
Ibid. § 41.

78. Every tenement or lodging house shall have the proper and suitable conveniences or receptacles for receiving garbage and other refuse matters.

House offal.
Ibid. § 42.

No tenement or lodging house, or any portion thereof, shall be used as a place of storage for any combustible article, or any article dangerous to life or detrimental to health; nor shall any horse, cow, calf, swine, pig, sheep or goat be kept in said house.

Combustible article not to be stored.
Animals not to be kept.

79. Every tenement or lodging house; and every part thereof, shall be kept clean and free from any accumulation of dirt, filth, garbage or other matter in or on the same, or in the yard, court, passage, area or alley connected with or belonging to the same.

To be kept clean.
Ibid. § 43.

The owner or keeper of any lodging house, and the owner or lessee of any tenement house, or part thereof, shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cesspools and drains thereof, of the house,

Owner to clean whenever required.

1871, c. 280, § 43. or part of the house, of which he is the owner or lessee, to the satisfaction of the board of health, so often as shall be required by or in accordance with, any regulation or ordinance of said city, and shall well and sufficiently, to the satisfaction of said board, whitewash the walls and ceilings thereof twice at least every year, in the months of April and October, unless the said board shall otherwise direct. Every tenement or lodging house shall have legibly posted or painted on the wall or door in the entry, or some public accessible place, the name and address of the owner or owners, and of the agent or agents, or any one having charge of the renting and collecting of the rents for the same; and service of any papers required by this act, or by any proceedings to enforce any of its provisions, or of the acts relating to the board of health, shall be sufficient, if made upon the person or persons so designated as owner or owners, agent or agents.

Walls and ceilings to be whitewashed twice a year.

Owner or agent's name to be posted.

Officers to have free access to houses.
Ibid. § 44.

80. The keeper of any lodging house, and the owner, agent of the owner, lessee and occupant of any tenement house, and every other person having the care or management thereof, shall, at all times, when required by any officer of the board of health, or by any officer upon whom any duty or authority is conferred by this act, give him free access to such house and to every part thereof.

Infectious diseases.

The owner or keeper of any lodging house, and the owner, agent of the owner, and the lessee of any tenement house, or part thereof, shall, whenever any person in such house is sick of fever, or of any infectious, pestilential or contagious disease, and such sickness is known to such owner, keeper, agent or lessee, give immediate notice thereof to the board of health, or to some officer of the same,

May be cleansed and disinfected at owner's expense.

and thereupon said board shall cause the same to be inspected, and may, if found necessary, cause the same to be immediately cleansed or disinfected at the expense of the owner, in such manner as they may deem necessary and effectual; and they may also cause the blankets, bedding and bedclothes used by any such sick person to be thoroughly cleansed, scoured and fumigated, and in extreme cases to be destroyed.

Buildings unfit for habitation may be vacated.
Ibid. § 45.

81. Whenever it shall be certified to the board of health by the superintendent, that any building, or part thereof, is unfit for human habitation, by reason of its being so infected with disease as to be likely to cause sickness among the occupants, or by reason of its

want of repair has become dangerous to life, said board may issue an order, and cause the same to be affixed conspicuously on the building, or part thereof, and to be personally served upon the owner, agent or lessee, if the same can be found in this state, requiring all persons therein to vacate such building for the reasons to be stated therein as aforesaid. 1871, c. 280, § 45.

Such building, or part thereof, shall, within ten days thereafter, be vacated; or within such shorter time, not less than twenty-four hours, as in said notice may be specified; but said board, if it shall become satisfied that the danger from said house, or part thereof, has ceased to exist, may revoke said order, and it shall thenceforward become inoperative.

82. No house hereafter erected shall be used as a tenement house or lodging house, and no house heretofore erected, and not now used for such purpose, shall be converted into, used or leased for a tenement or lodging house, unless, in addition to the requirements hereinbefore contained, it conforms to the requirements contained in the following sections. Additional provisions. Ibid. § 46.

83. It shall not be lawful hereafter to erect for, or convert to, the purposes of a tenement or lodging house, a building on the front of any lot where there is another building on the rear of the same lot, unless there is a clear, open space, exclusively belonging to the front building, and extending upwards from the ground of at least ten feet between said buildings, if they are one story high above the level of the ground; if they are two stories high, the distance between them shall not be less than fifteen feet; if they are three stories high, the distance between them shall be twenty feet; and if they are more than three stories high, the distance between them shall be twenty-five feet. At the rear of every building hereafter erected for, or converted to, the purpose of a tenement or lodging house on the back part of any lot, there shall be a clear, open space of ten feet between it and any other building. But when thorough ventilation of such open spaces can be otherwise secured, said distances may be lessened or modified in special cases, by a permit from the inspector of buildings. Light and air to be secured. Ibid. § 47. Inspector of buildings may modify provisions.

84. In every such house hereafter erected or converted, every habitable room, except rooms in the attic, shall be in every part not less than eight feet in height from the floor to the ceiling; Height of rooms. Ibid. § 48.

1871, c. 280, § 48. and every habitable room in the attic of any such building shall be at least eight feet in height from the floor to the ceiling, throughout not less than one-half the area of such room. Every such room shall have at least one window connecting with the external air, or over the door a suitable ventilator, connecting it with a room or hall which has a connection with the external air. The total area of window in every room communicating with the external air shall be equal to at least one-tenth of the superficial area of every such room ; and the top of one at least of such windows shall not be less than seven feet six inches above the floor, and the upper half of each window shall be so made as to open for the purposes of ventilation. Every habitable room of a less area than one hundred superficial feet, if it does not communicate directly with the external air, and is without an open fireplace, shall be provided with special means of ventilation by a separate air-shaft extending to the roof, or otherwise as the inspector of buildings may prescribe.

Construction of windows.

Inspector of buildings may order special means of ventilation.

Chimneys.
Ibid. § 49.

Receptacles for ashes, etc.
Water to be furnished.

Cellar to be cemented.

Halls.

Board of health may make other rules.
1872, c. 260, § 4.
Municipal Court to have concurrent jurisdiction.

85. Every such house hereafter erected or converted, shall have adequate chimneys running through every floor, with an open fireplace or grate, or place for a stove, properly connected with one of said chimneys, for every family and set of apartments. It shall have proper conveniences and receptacles for ashes and rubbish ; it shall have water furnished at one or more places in such house, or in the yard thereof, so that the same may be adequate and reasonably convenient for the use of the occupants thereof. It shall have the floor of the cellar properly cemented, so as to be water-tight. The halls on each floor shall open directly to the external air, with suitable windows, and shall have no room or other obstruction at the end, unless sufficient light or ventilation is otherwise provided for said halls, in a manner approved by the inspector of buildings.

86. The board of health shall have authority to make other regulations as to cellars and the ventilation of tenement houses. The municipal court of the city of Boston, the municipal court of the Dorchester district, and the municipal court of the southern district, shall have jurisdiction concurrent with the superior court of all offences against sections forty, forty-one, forty-two, forty-three, forty-four and forty-five of chapter two hundred and eighty

of the acts of year eighteen hundred and seventy-one, and every person violating any of these sections shall be guilty of a misdemeanor punishable by a fine not exceeding three hundred dollars, or by imprisonment not exceeding sixty days. All complaints of violations of sections forty, forty-one, forty-two, forty-three, forty-four and forty-five of this act [Chap. 280, 1871, §§ 76, 77, 78, 79, 80 and 81 of this digest] shall be made only by authority of the board of health.

1872, c. 260, §4.
Penalty.

Board of health
to make
complaints.

UNSAFE BUILDINGS.

87. If any building or parts of a building, staging or other structure, or anything attached to or connected with any building, or other structure in the city of Boston, shall from any cause be reported dangerous or unsafe, so as to endanger life and limb, it shall be the duty of the inspector of buildings to inspect such structure, and if, in his opinion, the same be dangerous, he shall immediately notify the owner, agent, or other party having an interest in said structure, to cause the same to be made safe and secure, or removed, as may be necessary.

Inspector of
buildings to
examine and
notify owner.
1873, c. 298, § 11.

88. The person or persons so notified shall be allowed until twelve o'clock noon of the day following the service of such notice, in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the same as expeditiously as can be done: *provided, however*, that in cases where the public safety requires immediate action, the inspector of buildings may enter upon the premises with such workmen and assistants as may be necessary, and cause the said unsafe structure to be shored up, taken down, or otherwise secured, without delay, and a proper fence or boarding to be put up for the protection of passers-by.

Owner to make
safe.
Ibid. § 12.

Inspector may
secure in urgent
cases.

89. If the owner, agent, or other party interested in said unsafe structure, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified in section 10,¹ then a careful survey of the premises named in said notice shall be made by three disinterested persons, one to be appointed by the inspector of buildings, one by the owner or other

Survey may be
held.
Ibid. § 13.

Board of sur
vey.

¹ So in the act; but it is evident that § 12 is referred to, *i. e.* § 88 of this digest.

1873, c. 208, § 13. interested party, and the third chosen by these two, and the report of such survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuse or neglect to appoint a member of said board of survey, then the survey shall be made by the city engineer and the chief engineer of the fire department of Boston, and in case of disagreement they shall choose a third person.

Inspector may
secure in case
of refusal or
neglect of
owner.
Ibid. § 14.

90. Whenever the report of any such survey, had as aforesaid, shall declare the structure to be unsafe or dangerous to life or limb, the inspector of buildings shall, upon continued refusal or neglect of the owner or other interested party, cause such unsafe or dangerous structure to be taken down or otherwise made safe; and the costs and charges shall become a lien upon said estate, to be collected according to law, but without prejudice to the right which the owner thereof may have to recover the same from any lessee or other person liable for the expense of repairs: *provided*, that nothing herein contained shall authorize the recovery by the lessor of the lessee of the cost of any charges which may have been rendered necessary through the default or negligence of the lessor, or through want of repair or defects existing in said premises at the commencement of the lease.

Liability for
refusal to make
safe.
Ibid. § 15.

91. Upon the citation of any structure as unsafe or dangerous, by the inspector of buildings, if the owner or other interested party, being notified thereof in writing, shall refuse or neglect to cause the said structure to be taken down or otherwise made safe, said owner or other interested party shall forfeit to the use of said city, for every day's continuance of said refusal or neglect, a sum not less than ten nor more than fifty dollars; said sum to be recoverable as debts are now by law recoverable.

Remedy for
parties ag-
grieved.
Ibid. § 16.

92. Any owner or other interested person aggrieved by any such order may, within three days after the service thereof upon him, apply for a jury to the superior court, if sitting in the county, or to any justice thereof in vacation. The court or justice shall issue a warrant for a jury to be empanelled by the sheriff within fourteen days from the date of the warrant, in the manner provided in chapter forty-three of the General Statutes relating to highways.

Jury may affirm
or annul order
of inspector.
Ibid. § 17.

93. The jury may affirm, annul, or alter such order, and the sheriff shall return the verdict to the next term of the court for

acceptance, and, being accepted, it shall take effect as an original order. 1873, c. 298, § 17.

94. If the order is affirmed, costs shall be taxed against the applicant; if it is annulled, the applicant shall recover damages and costs against the city; if it is altered in part, the court may render such judgment as to costs as justice may require. Costs. Ibid. § 18.

95. Nothing contained in the three preceding sections shall be construed to bar the right of the city to recover the penalty enacted in section thirteen,¹ for the continuance of the refusal or neglect of the owner or owners, or other interested party or parties, to cause the structure in question to be taken down or otherwise made safe, unless the order is annulled by the jury; but in default of such annulment, the city shall have the right to recover said penalty from the day of the original notice as enacted in said section. Proviso. Ibid. § 19.

96. In case the building or structure cited as unsafe or dangerous shall be in process of erection, alteration or repair, it shall be lawful for the supreme judicial court, or any justice thereof, either in term-time or vacation, to issue forthwith an injunction restraining further progress in the work on said building until the facts of the case shall have been investigated and determined as herein provided. S. J. C. may issue injunction. Ibid. § 20.

97. If any building in the city of Boston shall appear upon examination by the inspector of buildings to be specially dangerous to life or limb to members of the fire department or to citizens in case of fire, by reason of insufficient thickness of walls, overloaded floors, defective construction, or other causes, such building shall be held and taken to be dangerous within the meaning of and subject to all the provisions of this act; and the inspector of buildings, besides proceeding as herein before provided, may affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building. Buildings unsafe in case of fire subject to provisions of act. Ibid. § 21. Inspector may affix notice.

Any person or persons removing such notice, so affixed, shall be liable to a penalty of not less than ten nor more than fifty dollars for each and every offence. Penalty for removing notice.

¹ So in the act; but the reference should be to § 15, i. e. § 91 of this digest.

STORAGE OF COMBUSTIBLE MATERIALS.

Buildings occu-
pied as dwell-
ings not to have
combustible ma-
terials stored
therein.
1871. c. 280, § 61.

98. No building situated or hereafter erected within the building limits of the city of Boston, occupied in part or in whole as a dwelling, shall have any hay, straw, hemp, flax, shavings, burning fluid, turpentine, camphene, or any inflammable oil, or any other combustible material stored therein, or kept on sale, except in such quantities as shall be provided for by law or by a city ordinance.

BURNT AND DANGEROUS BUILDINGS.

Burnt or dan-
gerous build-
ings adjudged
nuisances, how
disposed of.
G. S. c. 87, § 1.
9 Gray, 290-296,
298.
12 Gray, 89.
14 Gray, 21.
97 Mass. 122, 593.

99. In any city or town which has adopted chapter four hundred and sixty-nine of the statutes of eighteen hundred and fifty-five, or which shall adopt this and the four following sections, at a legal meeting of the city council¹ or inhabitants of the town, if the mayor and aldermen or selectmen, after due notice in writing to the owner of any burnt, dilapidated, or dangerous building, and a hearing of the matter, adjudge the same to be a nuisance to the neighborhood, or dangerous, they may make and record an order prescribing such disposition, alteration, or regulation thereof as they deem necessary; and thereupon the city or town clerk shall deliver a copy of the order to a constable, who shall forthwith serve an attested copy thereof upon such owner, and make return of his doings thereon to said clerk.

Owner ag-
grieved may
apply for jury.
Ibid. § 2.
See 1873, c. 261.

100. Any owner aggrieved by such order may, within three days of the service thereof upon him, apply for a jury to the superior court, if sitting in the county, or to any justice thereof in vacation. The court or justice shall issue a warrant for a jury, to be empannelled by the sheriff within fourteen days from the date of the warrant, in the manner provided in chapter forty-three of the General Statutes relating to highways.

Verdict of jury,
etc.
Ibid. § 3.

101. The jury may affirm, annul, or alter such order; and the sheriff shall return the verdict to the next term of the court for acceptance, and, being accepted, it shall take effect as an original order.

Costs.
Ibid. § 7.

102. If the order is affirmed, costs shall be taxed against the applicant; if it is annulled, the applicant shall recover damages

¹ Adopted by the city council of Boston, March 17, 1860. See *City Records*, vol. 38, pp. 135, 142.

and costs against the city or town ; if it is altered in part, the court may render such judgment as to costs as justice shall require. G. S. c. 87, § 7.

103. The mayor and aldermen or selectmen of any city or town shall have the same power and authority to abate and remove any such nuisance, as are given to the board of health in sections eight, nine, and ten, of chapter twenty-six of the General Statutes. Nuisance may be abated, etc. Ibid. § 5.

FIRE-ESCAPES.

104. Any building already erected, or that may hereafter be erected, in which operatives are employed in any of the stories above the second story, shall be provided with such fire-escapes as shall be directed and approved by the inspector of buildings. And the owner or owners of any building upon which any fire-escapes may now be, or may hereafter be erected, shall keep the same in good repair and well painted. And no person shall at any time place any incumbrance of any kind whatever upon any said fire-escapes now erected, or that may hereafter be erected in said city. Fire-escapes to be provided in buildings where operatives are employed. 1872, c. 371, § 14.

105. It shall be the duty of the inspector of buildings to inspect all dwelling-houses now erected in the city of Boston, occupied by two or more families on any of the floors above the second floor from the level of the street, and any building now erected and occupied as a hotel, boarding or lodging house, factory, mill or manufactory, or for offices or workshops, in which persons are employed in any of the stories above the second story ; and if in his opinion, such building is not provided with proper facilities for the escape of such persons in case of fire, he shall immediately serve a notice in writing upon the owner or owners, agent or other party or parties having an interest in said building, requiring such facilities to be provided without delay. Fire-escapes to be provided in certain buildings. 1873, c. 298, § 22

106. If the person or persons so notified shall refuse or neglect to provide such facilities to the satisfaction of said inspector, within such time as the inspector may designate, then such a survey of the premises shall be had as provided by section thirteen of this act [§ 89 of digest]. Inspector to notify owner. Survey may be held on refusal of owner to comply with notice. Ibid. § 23.

107. If the report of such survey shall require the furnishing of the facilities as aforesaid, the requisite changes or alterations in Report of survey.

1873, c. 298, § 24.
Inspector may
make altera-
tions.

the building shall be particularly specified; and the inspector of buildings shall, upon the continued neglect or refusal of the owner or owners, or other party or parties interested in said building, cause such changes or alterations to be made, in the manner and subject to all the provisions specified and contained in sections fourteen to nineteen inclusive of this act. [St. 1873, c. 298 — §§ 90 to 95 of this digest.]

Right to enter
buildings.
Ibid. § 25.

108. The officers of the department for the survey and inspection of buildings in the city of Boston, and all surveyors or other persons required to execute the provisions of this act, shall, as far as may be necessary for the performance of their respective duties, have the right to enter any building or premises in said city.

LOCATION AND ERECTION OF STABLES.

Livery stables
not to be erected
within 175 feet
of any church.
1810, c. 124, § 1.
1860, c. 109.
1 Gray, 163.

109. No building shall be erected within the city of Boston, and used and improved as a stable for the taking in and keeping horses or chaises or other carriages, upon hire or to let, commonly called livery stables, within one hundred and seventy feet of any church or meeting-house erected for the public worship of God, without the consent in writing of the proprietors of such church or meeting-house, or of the religious society or parish worshipping therein, and the consent of the mayor and aldermen of the city of Boston.

Penalty.
1810, c. 124, § 2.

110. For any offence against the preceding provision, the owner or owners, keeper or keepers of such building, shall forfeit and pay the sum of one hundred dollars for every calendar month during which the same shall be so used and improved, to be recovered by action of debt, one half thereof to enure for the use of the poor of the city of Boston, the other half thereof to him or them, who shall sue for the same.

Livery stables
in maritime
towns to be
licensed.
G. S. c. 88, § 31.
1 Gray, 163.
5 Allen, 213.

111. Whoever occupies or uses a building in any maritime place for a livery stable, except in such part thereof as the mayor and aldermen or selectmen shall direct, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time.

Penalty for un-
authorized
erection or use
of stables.

112. Whoever erects, occupies, or uses a building for a stable for more than four horses, in any city or town, except in such part thereof as the mayor and aldermen or selectmen direct, shall forfeit

a sum not exceeding fifty dollars for every month he so occupies or uses such a building, and in like proportion for a longer or shorter time. And the supreme judicial court or any one of the justices thereof, either in term time or vacation, may issue an injunction to prevent such erection, occupancy, or use, without such direction. G. S. c. 88, § 32.

113. No person shall hereafter erect, occupy or use, any building for a stable in the city of Boston, except in such place as the board of aldermen of said city shall first in writing approve and direct, and every person so erecting, using or occupying, a building without such approval, shall forfeit a sum not exceeding fifty dollars for every month he so uses or occupies such building, and in like proportion for a longer or shorter time; this act shall not apply to any stable now erected, occupied or used, so long as the same is not enlarged or rebuilt.¹ Stables not to be built in Boston without consent in writing of board of aldermen.
1869, c. 369, § 1.
2 Allen, 159.
Proviso.

114. The supreme judicial court, or any justice thereof, either in term time or vacation, may issue an injunction to prevent the erection, occupancy or use, of any stable contrary to the provisions of this act. S. J. C. may prevent building by injunction.
Ibid. § 2.

REMOVAL OF SNOW AND ICE FROM ROOFS.

115. Cities and towns may make by-laws to prevent the falling, and to provide for the removal, of snow and ice from the roofs of buildings, in such portions of their limits, and to such extent, as they may deem expedient, and may annex penalties not exceeding twenty dollars, for any violation of such by-laws by the owner of any such building or his agent having the care thereof.² By-laws concerning snow and ice on roofs of buildings.
1863, c. 86, § 1.
See, also, G. S. c. 19, § 13.

¹ It appears from the decision in the 109 Mass. 320, that if a stable is destroyed by fire it may be rebuilt of no greater size or capacity without the permit required in § 112.

For conditions in relation to erection of stables, see order of board of aldermen, May 8, 1871.

² For an injury resulting from the sliding of a mass of ice and snow from a roof, upon a person travelling with due care in a highway, the owner of the building is liable, if the roof was subject to his use and control, and he suffered the ice and snow to remain there for an unusual and unreasonable time after he had notice of its accumulation and might have removed it; although all the rest of the building was leased to and occupied by tenants under covenants binding them to keep in repair the premises demised to them. 101 Mass. 251.

ORDINANCES.

PUBLIC BUILDINGS.¹

Committee on
public buildings
to be appointed.
July 1, 1850.

SECTION 1. In the month of January, in each year, there shall be appointed a joint committee of the city council, to be called the committee on public buildings, to consist of three members of the board of aldermen, and five members of the common council.

To have care
and custody of
school-houses
and other city
buildings,
except, etc.
Ibid.

SECT. 2. The said committee shall have the care and custody of all the school-houses and other buildings belonging to the city, and of the erection, alteration, and repair thereof, except as otherwise provided, and subject to such rules, orders, and regulations as the city council may from time to time adopt.

To lease build-
ings belonging
to city, subject,
etc.
Ibid.

SECT. 3. The said committee are authorized to lease any building belonging to the city, which is not otherwise appropriated, for any period not exceeding three years, and upon such terms and conditions as they may deem expedient, subject, however, to the approval of the board of aldermen; and the lease shall be signed by the mayor.

Lease to be
signed by
mayor.

Committee to
prepare plans
and specifica-
tions of build-
ings to be
erected.
July 1, 1850.
July 23, 1869.

SECT. 4. Whenever any building for the use of the city shall be erected, altered, or repaired, the expense of which may exceed the sum of fifteen hundred dollars, it shall be the duty of the committee who shall

¹ An ordinance concerning the public buildings, passed July 1, 1850, and amended July 7, 1853, July 18, 1853, November 24, 1865, April 16, 1867, June 29, 1869, and July 23, 1869.

have the charge of the same to prepare, or cause to be prepared, the requisite plans and specifications of the work to be done.

July 1, 1850.
July 23, 1869.

SECT. 5. The said committee shall give notice in the newspapers in which the ordinances of the city are published, of the time and place for the exhibition of such plans and specifications, and the time during which proposals will be received.

To publish
notice of time
and place for
exhibition of
plans, etc.
July 1, 1850.

SECT. 6. No proposal shall be received by the said committee from any person offering to contract for such work, unless the same is sealed ; and no proposal shall be opened except in committee actually assembled ; and the contents of no proposal shall be made known to any person not a member of the committee, until after a contract shall have been made ; *provided always*, that if any such proposals shall be offered by persons who, in the judgment of the said committee, shall be incompetent to perform their contracts in a workmanlike manner, or irresponsible in respect to their means of faithfully executing the same, the said committee may, in their discretion, reject any such proposal, notwithstanding the same be at a lower rate than other proposals offered for the same work.

Proposals for
work to be
sealed.
Ibid.

How opened.
Not to be dis-
closed till con-
tract is made.

Providso.

SECT. 7. In such cases where the amount of any contract shall exceed the sum of fifteen hundred dollars, the contract shall be in writing, and signed by the mayor on the part of the city ; and after being signed by the parties no such contract shall be al-

Contracts ex-
ceeding \$1,500
to be in writing,
and signed by
the mayor.
Not to be
altered, unless,
etc.

July 1, 1850.
July 23, 1869.

tered in any particular, unless three-fourths of the said committee shall signify their assent thereto in writing under their respective signatures, indorsed on the said contract.

Contracts for
repairing or
alterations need
not be in writ-
ing.
July 7, 1853.
July 23, 1869.

SECT. 8. The city council, whenever they shall deem it expedient, may, by order, authorize and direct the committee on public buildings to cause any alterations or repairs of any building specified in such order to be made, although the expense thereof may exceed the sum of fifteen hundred dollars, without advertising for proposals, and without making a contract in writing therefor signed by the mayor, as heretofore required by ordinance.

Expenditures
not to exceed
appropriations.
July 1, 1850.
April 16, 1837.

SECT. 9. The amount of expenditures for the foregoing purposes, in any one year, shall never exceed the appropriations made by the city council for the same; and no expenditure exceeding five hundred dollars shall ever be made, in the alteration or repair of any building, without an express vote of the city council authorizing the same.

Purchases of
land for build-
ings, how made.
July 1, 1850.
June 29, 1869.

SECT. 10. Whenever the city council shall order the purchase of any land, for the purpose of erecting any building thereon, except for educational purposes, such purchase shall be made under the direction of the said committee on public buildings.

Certain build-
ings excepted
from preceding
section.
July 1, 1850.

SECT. 11. The preceding sections shall not apply to the jail, the court-house, the registry of deeds, the house of correction, or any other buildings of which

the erection, care or maintenance is devolved by law on the board of aldermen. July 1, 1850.

SECT. 12. There shall be elected annually on the first Monday in February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a superintendent of public buildings, who shall hold his office, if not sooner removed, for one year from the first Monday in April in the year in which he shall be elected, and until a successor is elected and qualified. He shall be removable at the pleasure of the city council, and shall receive such compensation as the said council may from time to time determine. Superintendent of public buildings.
July 1, 1850.
June 29, 1869.

SECT. 13. The said superintendent, before entering on the duties of his office, shall give bond, with one or more sureties, to the approbation of the board of aldermen, with condition that he will not, directly, or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any contract or agreement for the erection, alteration, or repair of any building belonging to the city, or in any purchase, sale, or lease made by the city under and by the virtue of this ordinance.¹ To give bond.
July 1, 1850.
Condition of bond.

SECT. 14. The said superintendent, under the direction of the committee on public buildings, or of the board of aldermen, as the case may be, shall have To have care and custody of school-houses and other buildings.
Ibid.

¹ For the act of 1875, c. 232, relating to contracts made by public officers, see "Contracts with city officers," p. 206.

July 1, 1850.

His duties.

the care and custody of all the school-houses and other buildings belonging to the city, except as otherwise provided, whether used for county purposes or otherwise; he shall keep himself acquainted with their condition; shall employ suitable mechanics, and shall himself superintend all repairs that may be ordered on the same; and, in general, he shall render such services as may be required of him, in relation to such buildings, by the board of aldermen,¹ by the committee on public buildings, or by any other committee or board appointed by the city council.

Superintendent
of public build-
ings to have
care of city
hall.
Nov. 24, 1865.

SECT. 15. The superintendent of public buildings shall, under the direction of the committee on public buildings, have the care and custody of the city hall and the various apartments thereof, and to that end he shall appoint, subject to the approval of said committee, all necessary janitors, watchmen, engineers and their several assistants, and he shall be responsible for the faithful performance of their duties. He may, under the direction of said committee, apply to the mayor for a regular detail of police officers for day or night duty in said building, such officers to perform such duties, and in such manner as may be requested by said committee. He shall also furnish to the several officers in said building such furniture and supplies (excepting stationery) as said committee may deem proper; the compensation to be paid the above persons to be fixed by said committee.

¹ For care and custody of county court-house, see vote of board of aldermen, March 28, 1865, p. 147

SECT. 16. The said superintendent shall keep an accurate record of all buildings belonging to the city, and lands appurtenant to such buildings; and in the month of January, in each year, he shall present to the city council a report in relation to the same, showing their condition, and the nature and amount of expenditures that shall have been made in relation thereto.

To keep records.
July 1, 1850.
To report to city council.

SECT. 17. No building, or land appurtenant thereto, shall be sold by any committee of the city council, without an order from the city council authorizing such sale.

No building or land appurtenant to be sold without an order from the city council.
Ibid.

SECT. 18. Whenever the superintendent of public buildings shall sell any articles or materials belonging to the city, or shall do, or cause to be done, any work for any person or corporation from which money shall become due to the city, the said superintendent shall enter in the books to be kept for that purpose all such sales and work done, with the price thereof, and shall forthwith make out bills for the same and deliver them to the city collector for collection; and the said collector shall forthwith demand payment of the said bills; and in case any bills or dues under this ordinance shall remain unpaid at the expiration of three months after demand for payment as aforesaid, the said collector shall deliver the same to the city solicitor for legal proceedings; but if at any time the committee on public buildings shall be satisfied that the interests of the city require it, they may cause legal proceedings to be enforced at any time.

Superintendent to make and deliver all bills for materials sold and work done, to city treasurer for collection.
July 18, 1853.

CITY ARCHITECT.¹

City architect.
How chosen.
Dec. 24, 1875.

SECT. 19. There shall be chosen annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a city architect, who shall be a citizen of Boston. He shall hold his office for one year from the first Monday of April in the year in which he shall be elected, unless sooner removed. He may be removed at the pleasure of the city council; and vacancies may be filled at any time for the unexpired term. He shall receive such compensation as the city council may from time to time determine.

Duties of.
Ibid.

SECT. 20. The said architect shall perform all such services for the city of Boston as properly come under the direction of an architect, and shall be consulted on all important matters relating to public improvements of every kind, where the advice of an architect would be of service. He shall keep such records and make such reports as the committee on public buildings may from time to time direct. Whenever a board, committee, or head of a department in the city government is authorized to perform any work where the services of an architect are required, the said services shall, unless otherwise ordered, be performed by or under the direction of the city architect. He may, with the approval of the committee on public buildings, employ such assistants as may be necessary to perform the services which may be required of him.

¹ §§ 19-21. An ordinance to establish the office of city architect, passed Dec. 24, 1875.

SECT. 21. The joint standing committee on public buildings shall have the care and supervision of the city architect's office; and the appointment and discharge of all persons employed therein shall be with their approval; and they shall fix the amount of compensation to be paid to said employés respectively: *provided*, that the same shall not, in the aggregate, exceed the sum appropriated therefor by the city council.

To be under
direction of
committee on
public build-
ings.
Dec. 24, 1875.

BUILDING LIMITS.¹

SECT. 22. The limits within which all buildings hereafter erected shall be required to conform to the provisions of chapter two hundred and eighty of the acts of the year eighteen hundred and seventy-one, are hereby established and defined as follows:—

Building limits,
July 8, 1871.

Beginning at the intersection of the centre line of Dover and Albany streets; thence running eastwardly through the centre of Dover street to the harbor commissioners' line; thence around the northerly portion of the "city proper," by the said harbor commissioners' line to a point on Charles river opposite the centre line of Parker street, or cross dam; thence through the centre of Parker street or cross dam to a point opposite the centre of Ruggles street; thence through the centre of Ruggles street to the centre of Washington street; thence through the centre of

¹ The §§ 22-32 cover the following ordinances, passed under the authority of the laws relating to the inspection of buildings: An ordinance in relation to the regulation and inspection of buildings, passed July 8, 1871; an ordinance in addition to an ordinance in relation to the regulation and inspection of buildings, passed Dec. 30, 1871; an ordinance to amend an ordinance in relation to the regulation and inspection of buildings, passed April 1, 1874.

July 8, 1871.

Washington street to a point opposite the centre of Palmer street; thence through the centre of Palmer and Eustis streets to the centre of Hampden street; and thence through the centre of Hampden and Albany streets to the point of beginning.

The said district being shown by a shaded red line on a plan made by the city surveyor, dated June 26, 1871, and deposited in the office of the city surveyor.¹

Wooden build-
ings for dwell-
ings.
Dimensions and
restrictions.
Dec. 30, 1871.

SECT. 23. No wooden or frame buildings shall be erected in those parts of the city outside of the limits described in the foregoing section, except under the following limitations and restrictions, namely: No wooden building to be used for the purposes of a dwelling-house shall exceed a height of forty-two feet above the sills; and said sills shall not be laid below the grade of the street, and not more than three feet above the grade, as established by the city, and no wooden building to be used for the purposes of a dwelling-house, thirty-five feet or more in height, shall be erected in a range of more than forty feet without the intervention of a brick wall twelve inches thick to the top of the second floor above the street, and eight inches thick for the remaining height; and no wooden building to be used for the purposes aforesaid less than thirty-five feet in height shall be erected in a range of more than forty feet without the intervention of a brick wall, eight

¹ The ordinance of July 8, 1871, was published twice a week for two weeks in all daily papers, July 10, 1871.

inches thick, carried up the entire height of said building. Said brick wall shall be built up at least six inches above the flat of the roof of the highest building of which such walls form a part for the full extent of the flat, and the top of said wall shall be covered with a coping of stone or of iron or other metal; and where there is a Mansard or pitch roof, the wall shall be built up to the under side of the roof covering, which shall be laid and embedded in mortar upon said wall; and no wooden building to be used for the purposes of a dwelling-house shall be built at a less distance than three feet from any other wooden building without the intervention of a brick wall, where the united width of the two buildings exceeds forty feet: *provided*, that a wooden ell, not exceeding thirty feet in length, fifteen feet in width, or an equivalent number of feet in area, and not more than twenty-five feet in height above the sills of the building of which it forms a part, may be built in connection with dwelling-houses erected as aforesaid without the intervention of a brick wall between said ell and the main building.

Brick walls.
Dec. 30, 1871.

•
Ells allowed.

No wooden building to be used for other purposes than a dwelling-house shall exceed a height of fifty-two feet above the sills; and said sills shall not be laid below the grade of the street, and not more than three feet above the grade as established by the city. No such wooden building shall be erected in a range of more than fifty feet without the construction of brick walls, either at the sides or ends thereof, as the inspector of buildings shall designate in the permit given by him for the erection of said building, — said

Wooden buildings for other purposes.
Ibid.

Size, etc.

Dec. 30, 1871. walls to be twelve inches thick and carried up to a height of four feet above the roof. And no wooden building to be used for other purposes than a dwelling-house shall be built at a less distance than ten feet from any other wooden building which is twenty-five feet or more in height; or at a less distance than four feet from any other wooden building which is less than twenty-five feet in height.

Restrictions not
to apply to
buildings fifty
feet apart.
Ibid.

SECT. 24. The restrictions on the erection of wooden buildings, contained in the preceding section, shall not be held to apply to buildings erected at a distance of fifty feet or more from any other building, and from any street, lane or alley in the city, open, or intended to be opened, for public passage, whether accepted or not by the city.

Foundations
and sub-structures.
Ibid.

SECT. 25. All wooden buildings outside of the said limits shall be built upon a secure foundation of stone or brick carried up to the surface of the ground. If of brick, the foundation shall not be less than twelve inches thick, laid in cement mortar; if of rubble stone, it shall not be less than sixteen inches thick when laid in cement mortar, and not less than twenty inches thick when laid dry; if of block stone, it shall be not less than sixteen inches thick laid in cement mortar. All foundations shall be laid upon solid ground not less than four feet below the surface exposed to frost, or upon piles or other solid sub-structure. Piles shall be driven to a firm and solid bearing and the tops cut off at a proper grade. There shall be at least one row of piles, spaced not over three

Piles.

feet on centres in the direction of the length of the wall. Piles shall be capped with footing courses of stone. In the construction of work-shops or other buildings of a light character, or for a temporary purpose, built upon soft or marshy land, the inspector may, in his discretion, permit the sill to be placed upon mud sills, blocking, or piles cut to height of grade. Dec. 30, 1871.

SECT. 26. All chimneys in wooden buildings, erected outside said limits, shall be built of brick, stone or other fire-proof non-conducting material. All brick flues shall be smoothly plastered inside with mortar from top to bottom and outside below the roofing. Chimneys and flues. Ibid.

In no case shall chimneys rest upon any flooring without a footing of masonry or iron supported by iron beams, having a secure bearing on masonry or iron at either end.

All flues shall be topped out at least four feet above the roof of the building to which they belong. The brick topping out of chimneys shall not have more than two inches' projection, unless covered by a cap of metal or stone properly secured.

Hearths of fireplaces or grates shall be laid upon brick or other trimmer arches, or upon bars of iron supporting a bed of brickwork. Hearths, fireplaces.

No woodwork of any kind shall be placed at a less distance than one inch from the outside brickwork of any flue. In no case shall a nail be driven into the masonry of any flue. Flues.

No woodwork shall be placed at a less distance

Dec. 30, 1871.

than one inch from any tin or other metal flue or flues, pipe or pipes, used or intended to be used to convey heated air or steam in any building, unless such flues or pipes be cased with metal, leaving a free circulation of air all around the same.

Smoke-pipes.

No smoke-pipe in any such wooden or frame building shall hereafter enter any flue, unless the said pipe shall be at least twelve inches from either the floors or ceilings; and in all cases where smoke-pipes pass through stud or wooden partitions of any kind, whether the same be plastered or not, they shall be guarded by either a double collar of metal, with at least four inches air-space and holes for ventilation, or by a soap-stone ring, not less than three inches in thickness, and extending through the partition.

Frames and
joists.
Ibid.

SECT. 27. All wooden buildings, erected outside said limits, shall be built with posts, girts, and plates, properly mortised, tenoned, braced, and pinned in each story, and supported by suitable studding, the studs to be not more than thirty-two inches apart, the posts and girts to be not less than four by eight inches, or equivalent thereto.

Alterations of
buildings.
Ibid.

SECT. 28. No wooden building now erected, or hereafter to be erected, outside said limits, shall be altered, raised, roofed, enlarged or otherwise built upon in any manner contrary to the terms of this ordinance.

Permits to be
obtained.
Ibid.

SECT. 29. No wooden building shall hereafter be erected outside the said limits heretofore named in this ordinance, without a permit being first obtained

from the inspector of buildings; and no alteration or addition to any such building shall be made without a permit from said inspector. Dec. 30, 1871.

SECT. 30. Any person or persons violating any of the provisions of this ordinance [passed Dec. 30, 1871, being §§ 23-29 of this digest] shall, upon written notice from the inspector of buildings, served upon him personally, or posted conspicuously upon the building erected, or in progress of erection, alteration or repair in violation thereof, upon his or their neglect, or refusal to alter said building in conformity with the provisions of this ordinance, for a period of twenty-four hours from said service or said posting, be liable to a penalty of not less than twenty, nor more than fifty dollars, and to a like penalty for every day's continuance thereof.¹ Penalty for violation. Ibid.

SECT. 31. There shall be appointed, in the manner provided in section five of chapter two hundred and eighty of the acts of the year eighteen hundred and seventy-one, eight assistant inspectors of buildings; and members of the board of engineers of the fire department shall be eligible to the office.² Assistant inspectors. July 8, 1871, § 5. Dec. 20, 1872. April 1, 1874.

SECT. 32. The committee on public buildings shall furnish suitable rooms, either in the city hall, or Office for inspectors. July 8, 1871.

¹ For authority of Supreme Court to issue an injunction see St. 1873, c. 298, *ante*, p. 96.

² The ordinance of Dec. 30, 1871, §§ 23-30 of the above, was published January 8-10, 1872, in *Traveller, Journal, Times, and News*, twice a week for two weeks.

It is provided by § 35, c. 371, Acts of 1872, that the inspector and assistant inspectors shall not be employed or engaged in any other vocation.

July 8, 1871.

some other convenient locality, for the transaction of the business of the department for the regulation and inspection of buildings in the city of Boston, and shall provide the necessary furniture and fixtures for said rooms.

NOTICE OF INTENTION TO BUILD.¹

Notice shall be given of intention to build, etc.

Nov. 14, 1833.

July 14, 1855.

SECT. 33. All persons intending to erect or to make any alterations in the external walls of any building or buildings of any description, any part of which is to be placed upon or within ten feet of any of the public streets, squares, alleys, or lanes of the city, shall, before he or they proceed to build or erect the same, or to lay the foundation thereof, or to make the said alterations, give notice in writing to the inspector of buildings of their intention, with the dimensions of the structure proposed, the materials to be used, the number of the street or precise location, and the name of the owner or owners of the land, fifteen days at least before doing any act for carrying such intention into execution, in order that any encroachment or any other injury or inconvenience to the said public streets, squares, lanes, or alleys which might otherwise happen, may be thereby prevented; and in default thereof the city shall be discharged from all damages, of any nature whatsoever, resulting from the failure to give notice as above provided, particularly from all such damages or expenses as have been enhanced or occasioned by reason of anything done previously to, or without such notice.

¹ §§ 33-37 cover ordinances of Nov. 14, 1833, of May 16, 1850, and of July 14, 1855.

NUMBERING OF BUILDINGS.

SECT. 34. The board of aldermen shall have power to cause numbers in regular series to be affixed to, or inscribed on, all dwelling-houses and other buildings erected or fronting on any street, lane, alley, or public court within the city of Boston, at their discretion; and shall also have power to determine the form, size, and material of such numbers, and the mode, place, succession, and order of inscribing or affixing them on their respective houses or other buildings. And any owner or occupant of any building or part of a building who shall neglect or refuse to affix to the same the number designated by the board of aldermen, or by some person by them duly authorized, or who shall affix to the same, or retain thereon more than one day, any number contrary to the direction of the said board, or person so authorized, shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, and a like sum for every subsequent offence.

Numbers of
buildings.
Nov. 14, 1833.
May 16, 1850.

Penalty for
numbering con-
trary to direc-
tions.
May 16, 1850.

CELLAR DOORS AND PLATFORMS.

SECT. 35. Whenever any cellar-door or the platform thereof shall project into any of the streets, lanes, alleys, public squares, or places within the city, it shall be the duty of the owners and occupants of the buildings or estates to which the same belong to keep the same in good repair. And if at any time the said cellar-doors or platforms are out of repair, so that in the opinion of the board of aldermen the safety

Cellar-doors
and platforms
to be kept in
good repair.
Nov. 14, 1833.
See Streets.

Nov. 14, 1833.

of the inhabitants is thereby endangered, the said board are hereby authorized to notify the said owners and occupants of the fact; and if said owners or occupants neglect or refuse for the space of twenty-four hours to repair the same, the said board shall forthwith cause the same to be repaired at the expense of said owners or occupants, and said owners and occupants shall in case of such neglect or refusal, as aforesaid, be further liable to a penalty of not less than one nor more than fifty dollars, for each and every day that said cellar-door or the platform thereof shall continue to be out of repair.

Cellar-doors to
be lighted when
open at night.
Ibid.
See *Streets*.

SECT. 36. Whenever any of the cellar-doors before mentioned are open, or the platforms thereof removed at any time during the night, it shall be the duty of the occupant of the cellar to which the same belongs to cause a sufficient light to be so placed that the opening of said door or removal of said platform shall at all times during the night be distinctly visible. And any person offending against the provisions of this section shall forfeit and pay a sum not less than one nor more than fifty dollars.

PENALTY FOR DEFACING BUILDINGS.

Defacing build-
ings, etc.

SECT. 37. Any person or persons who shall be guilty of defacing any building or buildings, fence, sign, or other property in the city, by cutting, breaking, daubing with paint, or in any other way defacing or injuring the same, shall upon conviction thereof pay a fine not exceeding fifty dollars.¹

¹ See Statutes, §§ 9 and 10, *ante*. p. 90.

RULES AND ORDERS OF THE BOARD OF ALDERMEN.

CARE OF COURT-HOUSE.

Ordered, That all matters in relation to the care Court-House.
March 28, 1865. and custody of the county court-house and of the several apartments therein, not under the charge of the chief of police, be vested in the committee on public buildings on the part of this board until otherwise ordered; and that the superintendent of public buildings under the advice of said committee provide such janitors, assistants, supplies or materials as may from time to time be found necessary for the safe and efficient custody and security of said court-house, pursuant to the requirements of section fourteen of the ordinance on public buildings.

GRADE OF CELLARS ESTABLISHED.

Ordered, That in pursuance of chapter 377 of the Grade of cellars.
Dec. 24, 1872. acts of the legislature of 1872, relating to cellars and basements in the city of Boston, this board establish a grade of twelve feet above mean low water.

MOVING OF BUILDINGS THROUGH STREETS REGULATED.¹

SECTION 1. All applications for moving buildings Applications
for moving to
be submitted to
Board.
Dec. 23, 1872. through the streets of this city shall be made to the board of aldermen and referred to a committee for consideration and report.

¹ See ordinance in relation to "Streets," p. 778. And case of Day *vs.* Green, 4 Cush. 433.

Dec. 23, 1872.
Form of appli-
cation.

SECT. 2. All applications shall state the location of the building proposed to be moved; its length, width, height, and the principal materials of its exterior sides and roof; and shall definitely describe the route over which it is to be moved, and the length of time required to move the same.

Inspector of
buildings to
consent.

SECT. 3. All applications shall be accompanied by the written consent of the inspector of buildings to place the building on the lot proposed; also by the written consent of all railroad corporations whose tracks are to be crossed or encumbered by the moving of the building.

Persons author-
ized to move.

SECT. 4. Permits shall be granted only to practical building-movers, who are known to be engaged in such business.

Bond to be
given.

SECT. 5. Before a permit is issued the building-mover shall file with the city clerk a bond in the sum of not less than one thousand dollars, with two or more sureties (one of whom shall be the owner of the building), to save harmless and indemnify the city from all damages which may be caused to persons or property by reason of the moving of the building.

Trees not to be
removed with-
out consent.

SECT. 6. The consent of the board of aldermen shall be obtained before any shade trees are removed or the branches thereof cut or trimmed.

SECT. 7. The written consent of the board of fire commissioners shall be obtained before any fire-alarm telegraph wires are cut or removed.

Dec. 23, 1872.
Fire-alarm
wires not to be
cut.

SECT. 8. The written consent of the superintendent of lamps must be obtained before any lamps or lamp-posts are removed.

Lamp-posts not
to be removed
without con-
sent.

CARRIAGES.

STATUTES.

1. When persons meet each other on a bridge or road, travelling with carriages, wagons, carts, sleds, sleighs, or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that their respective carriages or other vehicles may pass each other without interference.¹

Travellers with
carriages, meet-
ing, to turn to
right.
G. S. c. 77, § 1.

2. The driver of a carriage or other vehicle passing a carriage or other vehicle travelling in the same direction shall drive to the left of the middle of the travelled part of a bridge or road; and if the bridge or road is of sufficient width for the two vehicles to pass, the driver of the leading one shall not wilfully obstruct the same.

Travellers with
carriages, mov-
ing in the same
direction, to
pass on the left.
G. S. c. 77, § 2.

3. No person shall travel on a bridge or road with a sleigh or sled drawn by one or more horses, unless there are at least three bells attached to some part of the harness.

Bells to be used
with sleighs.
G. S. c. 77, § 3.
11 Gray, 342.

4. Whoever offends against the provisions of the preceding sections shall for each offence forfeit a sum not exceeding twenty dollars, and be further liable to any party for all damages sustained by reason of such offence: *provided*, that every complaint therefor shall be made within three months after the offence is committed, and that every action for damages shall be commenced within twelve months after the cause of action has accrued.

Penalties, and
how to be re-
covered.
G. S. c. 77, § 4.
11 Met. 403.
2 Gray, 181.
100 Mass. 313.
Limitation.

5. The provisions of the above sections shall not apply to horse railroads.

Provisions do
not apply to
horse railroads.
G. S. c. 77, § 5.

¹ 1 Pick. 345. 23 Pick. 201. 8 Met. 213. 11 Met. 404. 12 Met. 415.
10 Cush. 495. 2 Gray, 181. 11 Gray, 418. 111 Mass. 360. 12 Allen, 84.
100 Mass. 313.

Drivers of coaches, etc., not to leave their horses without charge. Penalty.
G. S. c. 160, § 36.
112 Mass. 79.

Board of aldermen may regulate carriages, etc. Penalties. Fee for license. Right to make by-laws not impaired.
G. S. c. 19, § 14.
2 Cush. 562.
98 Mass. 1.

City may regulate rate of speed of horses.
1835, c. 31, § 1.
3 Pick. 462.

Police may arrest without warrant.
Ibid. § 2.

Cities and towns may make regulations relating to carriages, coasting, etc.
1875, c. 136, § 1.

6. If a driver of a stage-coach or other vehicle, for the conveyance of passengers for hire, when a passenger is within or upon such coach or vehicle, leaves the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment in the jail not exceeding two months, or by fine not exceeding fifty dollars.¹

7. The mayor and aldermen of the city may make rules and orders for the regulation of all carriages and vehicles used either wholly or in part therein, whether with or without animal power, with penalties for violations thereof, not exceeding twenty dollars for one offence; and may receive annually one dollar and no more for each license, granted by them to a person to set up and use any carriage or vehicle within such city. Such rules shall not take effect until they have been published at least one week in some newspaper published in the city or in the county in which the city is situated. This section shall not impair the right of a city to make by-laws relating to the subject.

8. Cities and towns may, by ordinance or by-law, prohibit persons from riding or driving horses, or other beasts of burthen, carriage or draught, in or upon any of the streets or ways for public travel therein, at a rate of speed which they deem inconsistent with the public safety or convenience, under such penalties as they are authorized to impose for breaches of other ordinances or by-laws.

9. A person violating a provision of such ordinance or by-law, may be apprehended by a sheriff, deputy sheriff, constable, police officer or watchman, without a written warrant, and kept in custody in a convenient place, not more than twenty-four hours, Sundays excepted; at or before the expiration of which time he shall be brought before a justice of the peace or police court, and proceeded against according to law.

10. The mayor and aldermen of any city, and the selectmen of any town, may make such rules and regulations in relation to the passage of carriages, wagons, carts, trucks, sled, sleighs, horse-cars, or other vehicles, or to the use of sleds or other vehicles for coasting in and through the streets or public ways of such city or town, as they shall deem necessary for the public safety or con-

¹ For injury to baggage by hackmen see St. 1869, c. 307.

venience, with penalties for violation thereof, not exceeding twenty ^{1875, c. 136, § 1.} dollars for one offence.

RULES AND ORDERS OF THE MAYOR AND ALDERMEN.¹

SECTION 1. Every stage-coach, cab, chariot, coachee, ^{Hackney carriage defined. Sept. 21, 1875.} barouche, landau, or other vehicle, whether on wheels or runners, except street cars, drawn by one or more horses, or other animal power, which shall be used in the city of Boston for the conveyance of persons for hire from place to place within said city, shall be deemed a hackney carriage within the meaning of these regulations.

SECT. 2. On the first Monday of February, annually, ^{Supt. of Hacks Appointment and duties. Ibid.} or within sixty days thereafter, there shall be appointed by the mayor and aldermen a suitable person, with police powers, as superintendent of hacks, who shall hold his office for one year from the first Monday in April following said appointment, and who shall, under the direction of the committee on licenses, keep proper records, both alphabetically and numerically, of all hackney carriages licensed from time to time by the board of aldermen, the stands assigned therefor, and the names of the owners of said hackney carriages, together with such other facts as may be deemed necessary.

It shall be his duty, in common with other police officers of this city, to be vigilant and active in enforcing all the laws of this State, and the rules and orders of the mayor and aldermen, respecting the standing,

¹ Rules and regulations relating to carriages and other vehicles passed Sept. 21, 1875. Published in *Boston Journal*, Sept. 24 and Oct. 1, and *Boston Post*, Sept. 24 and 27, 1875.

Sept. 21, 1875. employment and use of hackney carriages, and also for the government of the cars on the several street railways in this city, and to make the necessary complaints for the violation of any of such laws or rules; and he shall receive such compensation for his services as the city council may determine.

License re-
quired for each
hack.
Ibid.

SECT. 3. No person shall set up, use or drive in the city of Boston any hackney carriage for the conveyance of persons for hire from place to place within said city, without a license for such carriage from the board of aldermen, under a penalty not exceeding twenty dollars every time such carriage is used.

How granted
and revoked.
Ibid.

SECT. 4. The board of aldermen will, from time to time, grant licenses to such persons, and upon such terms as they may deem expedient, to set up, use or drive hackney carriages for the conveyance of persons for hire from place to place within the city, and they may revoke such licenses at their discretion; and a record of all licenses so granted shall be kept by the superintendent of hacks.

Fee for license.
Ibid.

SECT. 5. For every license so granted there shall be paid to the superintendent of hacks the sum of one dollar for the use of the city; and he shall pay over the same monthly to the city collector.

Expiration of
license.
Ibid.

Transfer.

SECT. 6. All licenses granted as aforesaid shall expire on the first day of July next after the date thereof, and no license shall be sold, assigned or transferred, without the consent of the board of alder-

men endorsed thereon by the city clerk or his assistant. Sept. 21, 1875.

SECT. 7. The person in whose name a license is taken out for a hackney carriage shall, for all the purposes of these rules and orders, be considered as the owner of the same, and liable to all forfeitures and penalties herein contained; unless, upon the sale of the said carriage, notice thereof be given to the superintendent of hacks, and the license delivered to him. License to be in name of owner. Ibid.

SECT. 8. Any person who may be licensed as aforesaid, either as owner or driver of any hackney carriage, who shall continue to use any such carriage, and shall neglect or refuse to take out and pay for his license within thirty days after notice that the same has been granted, shall be liable to a fine not exceeding twenty dollars for each and every day thereafter that he, or they, shall so refuse or neglect to take out said license. Penalty for neglect, etc. Ibid.

SECT. 9. Hackney carriages shall be marked and numbered in the manner following, viz.: Every hack or landau shall be marked on the outside and upon each side, on the sill or rocker, immediately below the doors, with the number of the license in white, gilded or plated figures in the Arabic character, of not less than one and a half inches in size, on a dark ground, or with a dark figure of the same kind and size, upon a light ground, and no other figure or device within four inches of the same. Stage-coaches shall be Carriages to be marked and numbered. Ibid.

Sept. 21, 1875. numbered in like manner on the top rail of the doors. Omnibuses shall be numbered in like manner on the lower panel of the door. Cabs shall be numbered in like manner on the centre of the top panel of the door, immediately below the glass. And if any owner or driver of any hackney carriage shall use or drive any such carriage, or permit the same to be used and driven, without complying with the foregoing requisitions, said owner or driver shall be liable to a fine not exceeding twenty dollars for each offence.

Rates of fare to
be strictly ob-
served.
Penalty.
Ibid.

SECT. 10. The driver of each hack shall carry at all times a copy of the established rates of fare, so that it shall be accessible to any passenger who desires to consult the same. And no owner or driver, or other person having charge of any hackney carriage, shall demand or receive any more than the price or rate of fare established by the board of aldermen, under a penalty not exceeding twenty dollars, and he shall forfeit his license. And for refusing to carry any passenger from any railroad station or steamboat landing to any point within this city, the owner, driver, or other person having charge of such hackney carriage, shall be subject to a like penalty.

Penalty for use
of wrong num-
ber.
Ibid.

SECT. 11. No owner or driver of any hackney carriage shall use or suffer such carriage to be used with any other number upon the same than that assigned by the board of aldermen; nor with such number placed on any other part of such carriage than that designated in the preceding section, under a

penalty not exceeding twenty dollars every time such carriage is used. Sept. 21, 1875.

SECT. 12. No owner, driver, or other person having charge of any licensed hackney carriage, shall leave such carriage and horses, when harnessed, in any street, square, lane, alley, or public place, unless in the care of some suitable person, under a penalty not exceeding twenty dollars for every such offence. Carriage and horses not to be left. Ibid.

SECT. 13. No owner, driver, or other person having charge of any hackney carriage, shall stand with such carriage to solicit passengers in any street, square, lane, alley, or public place within the city, other than the place assigned to such carriage by the board of aldermen, under a penalty not exceeding twenty dollars for each offence. To occupy stand assigned. Ibid.

SECT. 14. No owner, driver, or other person having charge of any hackney carriage, shall stop his carriage abreast of any other carriage in any street, square, lane, alley, or public place within the city, or stop his carriage in any street, square, lane, alley, or public place, so as to obstruct the same, or the sidewalk, flagstone, or crossing thereof, under a penalty not exceeding twenty dollars for each offence. Stand not to obstruct travel. Ibid.

SECT. 15. Every owner, driver, or other person having charge of any hackney carriage, for which a license has been given to stand in any street or square, at any railroad station, steamboat landing, Drivers to wear badge, etc. Ibid.

Sept. 21, 1875.

theatre, museum, or other place of public entertainment, shall at all times, when waiting for employment, wear a badge on his hat or cap with the number of his carriage thereon in brass or plated figures of not less than one inch and a half in size, and so placed that the same may be distinctly seen and read, under a penalty not exceeding twenty dollars for each offence.

HACK FARES.¹

Rates of fare.
June 24, 1869.

SECT. 16.² On and after the thirtieth day of June, 1869, and until otherwise ordered, the prices, or rates of fare, to be taken by, or paid to, the owner, driver, or other person having charge of any hackney carriage, except omnibuses, shall be as follows:—

For one adult passenger from one place to another within the city proper (except as hereinafter provided), or from one place to another within the limits of East Boston—or from one place to another within the limits of South Boston—or from one place to another within the limits of Boston Highlands (formerly Roxbury), the fare shall be *fifty*

¹ The rate of fare prescribed by the city ordinances of Boston to be taken by the driver of a hackney carriage for carrying a passenger from one place to another within the city includes compensation for time and trouble in going for the passenger as well as in carrying him to his point of destination. 98 Mass. 1.

The driver of a hackney carriage, in Boston, who has undertaken to carry from one place to another within the city, a passenger who has entered or begun to enter the carriage, is precluded by the city ordinances from making a special contract with him for a higher rate of fare for the service than that which the ordinances prescribe. *Ib.*

² This section was published in the *Boston Daily Advertiser*, *Boston Post*, *Boston Daily Journal*, *Boston Daily Evening Traveller*, *Boston Evening Transcript*, three weeks, successively, from June 26, 1869.

cents, and for every additional adult passenger, *fifty cents*. June 24, 1869.

For one adult passenger from any place (within the city proper) south of Dover street and west of Berkeley street, to any place north of State, Court and Cambridge streets; or from any place north of State, Court and Cambridge streets, to any place south of Dover street and west of Berkeley street, the fare shall be *one dollar*, and for two or more passengers *fifty cents* each.

For children under four years of age, with an adult, no charge shall be made. For children between four and twelve years of age, when accompanied by an adult, *twenty-five cents* each. Children under four years of age.

Between the hours of 12 o'clock at night and 6 o'clock in the morning, for one adult passenger, the fare shall be double the amount allowed in the preceding sections, and *fifty cents* for every additional adult passenger. Between 12 o'clock and 6 o'clock, A.M.

The baggage used by any person in travelling shall be free of charge. Baggage free.

SECT. 17.¹ On and after the first day of August, 1869, the prices of rates of fare to be taken by, or paid to, the owner, driver or other person having charge of any hackney carriage, except omnibuses, shall be as follows: — Rates of fare between city proper and Highlands. July 26, 1869.

For one adult passenger, from any place in the city proper, north of Essex and Boylston streets, to any

¹This section was published in the Boston Daily *Advertiser* and Boston *Post* for two weeks from July 28, 1869; and in the *Journal, Traveller* and *Transcript* for two weeks from July 29, 1869.

July 26, 1869.

place in the Boston Highlands, or from any place in the Boston Highlands, to any place in the city proper, north of Essex and Boylston streets, the fare shall be *two dollars and fifty cents*; for two passengers, *one dollar and twenty-five cents* each; for three passengers, *one dollar* each; for four passengers, *seventy-five cents* each.

For one adult passenger, from any place in the city proper, south of Essex and Boylston streets, and north of Dover and Berkeley streets, to any place in the Boston Highlands, or from any place in the Boston Highlands to any place in the city proper, south of Essex and Boylston streets, and north of Dover and Berkeley streets, the fare shall be *two dollars*; for two passengers, *one dollar* each; for three passengers, *seventy-five cents* each; for four passengers, *sixty-two and a half cents* each.

For one adult passenger, from any place in the city proper, south of Dover and Berkeley streets, to any place in the Boston Highlands, or from any place in the Boston Highlands to any place in the city proper, south of Dover and Berkeley streets, the fare shall be *one dollar and twenty-five cents*; for two passengers, *seventy-five cents* each; for three or more passengers, *fifty cents* each.

* Children under
four years of
age.

For children under four years of age, with an adult, no charge shall be made. For children between four and twelve years of age, when accompanied by an adult, *twenty-five cents* each.

Rates of fares
to and from

SECT. 18.¹ For carrying one adult passenger from

¹ Duly advertised in daily papers.

any part of the city proper to either South Boston or East Boston, or from South Boston or East Boston to the city proper, *one dollar*; for two or more such passengers, between such points, *seventy-five cents* each.

South Boston
or East Boston.
March 14, 1864.
March 21, 1864.

For carrying children between four and twelve years of age, when accompanied by an adult, one-half of the above sums; and for carrying children under four years of age, when accompanied by an adult, no charge is to be made.

For children.
Ibid.

The baggage used by any person in travelling shall be free of charge.

SECT. 19. On and after the first day of May, A. D. 1871, and until otherwise ordered, the prices or rates of fare to be taken by, or paid to, the owner, driver, or other person having charge of any hackney carriage (except omnibuses), for the conveyance of passengers or baggage, within the limits described, shall be as follows:—

Dorchester
hack fares.
April 24, 1871.

For one adult passenger, from one place to another within the limits of Dorchester, the fare shall be *one dollar*.

And for each additional adult passenger the fare shall be *fifty cents*.

Provided, however, that between the hours of eleven of the clock, P. M., and five of the clock, A. M., the fare shall be *one dollar and fifty cents* for one passenger; *seventy-five cents* each for two passengers; and for each additional passenger more than two, *fifty cents*.

For one adult passenger from any point in Dorchester north of Centre street, to any point in the city

April 24, 1871.

proper south of Summer street and Beacon street, the fare shall be *three dollars*; for two passengers, *one dollar and fifty cents* each; for three passengers, *one dollar* each; for four passengers, *seventy-five cents* each.

For one adult passenger, from any point in Dorchester north of Centre street, to any point in the city proper north of Summer street and Beacon street, the fare shall be *four dollars*; for two passengers, *two dollars* each; for three passengers, *one dollar and thirty-three cents* each; for four passengers, *one dollar* each.

For one adult passenger, from any point in Dorchester south of Centre street, to any point in the city proper south of Summer street and Beacon street, the fare shall be *five dollars*; for two passengers, *two dollars and fifty cents* each; for three passengers, *one dollar and sixty-six cents* each; for four passengers, *one dollar and twenty-five cents* each.

For one adult passenger, from any point in Dorchester south of Centre street, to any point in the city proper north of Summer street and Beacon street, the fare shall be *six dollars*; for two passengers, *three dollars* each; for three passengers, *two dollars* each; for four passengers, *one dollar and fifty cents* each.

For children under four years of age, with an adult, no charge shall be made. For children between four and twelve years of age, when accompanied by an adult, the fare shall be half the rates for adults.

No charge shall be made for one or two trunks; but for each additional trunk more than two, *fifty cents* may be charged.

SECT. 20.¹ On and after the tenth day of June, Charlestown.
June 8, 1874. in the year 1874, the prices, or rates of fare, to be taken by, or paid to, the owner, driver or other person having the charge of any hackney carriage except omnibuses, for the transportation of persons and baggage, within the sections of the city hereinafter designated, shall be as follows: —

For one adult passenger, from one place to another within the limits of Charlestown, the fare shall be *fifty cents*; and for every additional adult passenger, *fifty cents*.

For one adult passenger, from any point in Charlestown to any point in the city proper north of Cambridge, Court and State streets, or from any place north of Cambridge, Court and State streets, to Charlestown, the fare shall be *one dollar*; for two adult passengers the fare shall be *fifty cents* each, and *fifty cents* for each additional passenger.

For one adult passenger, from any point in Charlestown to any point in the city south of Cambridge, Court and State streets, and north of Dover and Berkeley streets, or from any point in said portion of the city to any point in Charlestown, the fare shall be *two dollars*; for two passengers, *one dollar* each; for three passengers, *seventy-five cents* each; for four passengers, *sixty-two and a half cents* each.

For one adult passenger, from any point in Charlestown to any point south of Dover and Berkeley streets and north of the old division line of Roxbury,

¹ The rates of fare for Charlestown, Brighton and West Roxbury, together with the general rules above set forth, were published two weeks in the *Boston Journal* Aug. 4, 6, and 11, 1874.

June 8, 1874.

or from any point in said portion of the city to any point in Charlestown, the fare shall be *two dollars and fifty cents*; for two passengers, *one dollar and fifty cents* each; for three passengers, *one dollar* each; for four passengers, *seventy-five cents* each.

For one adult passenger, from any point in Charlestown to any point in Roxbury, or from any point in Roxbury to any point in Charlestown, the fare shall be *four dollars*; for two passengers, *two dollars* each; for three passengers, *one dollar and thirty-five cents* each; for four passengers, *one dollar* each.

For one adult passenger, from any point in Charlestown to any point in Dorchester north of Centre street, or from any point in said portion of the city to any point in Charlestown, the fare shall be *five dollars*; for two passengers, *two dollars and fifty cents* each; for three passengers, *one dollar and seventy-five cents* each; for four passengers, *one dollar and fifty cents* each.

For one adult passenger, from Charlestown to any point in Dorchester south of Centre street, or from any point in said portion of the city to any point in Charlestown, the fare shall be *six dollars*; for two passengers, *three dollars* each; for three passengers, *two dollars* each; for four passengers, *one dollar and seventy-five cents* each.

For one adult passenger, from Charlestown, to any point in South or East Boston, or from any point in South or East Boston to any point in Charlestown, the fare shall be *three dollars*; for two passengers, *one dollar and fifty cents* each; for three passengers,

one dollar each; for four passengers, *seventy-five cents* Brighton.
June 8, 1874.
each.

For children under four years of age, with an adult no charge shall be made. For children between four and twelve years of age, when accompanied by an adult, the fare shall be half the price charged for an adult.

Between the hours of twelve o'clock at night and six o'clock in the morning, the fare shall be *fifty cents* for each passenger, in addition to the amount allowed in the preceding sections.

The baggage used by any person in travelling shall be free of charge.¹

SECT. 21. For one adult passenger, from one place Brighton.
June 8, 1874. to another within the limits of Brighton, the fare shall be *one dollar*; for two passengers, the fare shall be *fifty cents* each; and each additional passenger *fifty cents*.

For one adult passenger, from any point in Brighton to any point in the city proper, or from any point in the city proper to any point in Brighton, the fare shall be *five dollars*; for two passengers, *two dollars and fifty cents* each; for three passengers, *one dollar and seventy-five cents* each; for four passengers, *one dollar and fifty cents* each.

For one adult passenger, from any point in Brighton to any point in Roxbury, or from any point in Roxbury to any point in Brighton, the fare shall be

¹ These rates of fare were published for two weeks in the *Boston Journal*, August 4, 6, and 11, and in the *Bunker Hill Times* and *Charlestown Advertiser*, August 8, 1874.

June 8, 1874.

four dollars and fifty cents; for two passengers, *two dollars and twenty-five cents* each; for three passengers, *one dollar and sixty cents* each; and for four passengers, *one dollar and twenty-five cents* each.

For one adult passenger, from any point in Brighton to any point in Charlestown, or from any point in Charlestown to any point in Brighton, the fare shall be *five dollars*; for two passengers, *two dollars and fifty cents* each; for three passengers, *one dollar and seventy-five cents* each; for four passengers, *one dollar and fifty cents* each.

For one adult passenger, from any place in Brighton to any point in Dorchester, or from any point in Dorchester to any point in Brighton, the fare shall be *five dollars and fifty cents*; for two passengers, *two dollars and seventy-five cents* each; for three passengers, *two dollars* each; for four passengers, *one dollar and sixty-two and a half cents* each.

For one adult passenger, from any point in Brighton to any point in South Boston, or from any point in South Boston to any point in Brighton, the fare shall be *five dollars and fifty cents*; for two passengers, *two dollars and seventy-five cents* each; for three passengers, *two dollars* each; for four passengers, *one dollar and sixty-two and a half cents* each.

For one adult passenger, from any point in Brighton to any point in East Boston, or from any point in East Boston to any point in Brighton, the fare shall be *six dollars*; for two passengers, *three dollars* each; for three passengers, *two dollars and twenty-*

five cents each; for four passengers, *one dollar* June 8, 1874.
and *seventy-five cents* each.

For children under four years of age, with an adult, no charge shall be made. For children between four and twelve years of age, when accompanied by an adult, the fare shall be half the price charged for an adult.

Between the hours of twelve o'clock at night and six o'clock in the morning, the fare shall be *fifty cents* for each passenger, in addition to the amount allowed in the preceding sections.

The baggage used by any person in travelling shall be free of charge.¹

SECT. 22. For one adult passenger, from one place West Roxbury.
July 8, 1874. to another, within the limits of West Roxbury, east of Walk-hill street, the fare shall be *fifty cents*; and for every additional adult passenger, *fifty cents*.

For one adult passenger, from one place to another within the limits of West Roxbury, west of Walk-hill street and east of Beach street, the fare shall be *fifty cents*; and for every additional adult passenger, *fifty cents*.

For one adult passenger, from one place to another within the limits of West Roxbury, west of Beach street, the fare shall be *fifty cents*; and for every additional adult passenger, *fifty cents*.

For one adult passenger, from any place in West Roxbury east of Walk-hill street, to any place in the city proper south of Boylston and Essex streets, and

¹ These rates of fare were published for two weeks in the *Boston Journal* Aug. 4, 6 and 11, 1874.

July 8, 1874.

north of the old Roxbury line, or from any place in said portion of the city proper to any place in said portion of West Roxbury, the fare shall be *three dollars and fifty cents*; for *two* passengers, *one dollar and seventy-five cents* each, for three passengers, *one dollar and twenty-five cents* each; for *four* passengers, one dollar each.

For one adult passenger, from any point in West Roxbury east of Walk-hill street, to any point in the city proper north of Essex and Boylston streets, or from any point in the city proper north of Essex and Boylston streets to any point in West Roxbury east of Walk-hill street, the fare shall be *four dollars and fifty cents*; for *two* passengers, *two dollars and twenty-five cents* each; for *three* passengers, *one dollar and sixty-seven cents* each; for *four* passengers, *one dollar and thirty-seven and a half cents* each.

For one adult passenger, from any point in West Roxbury east of Walk-hill street to any point in Charlestown, or from any point in Charlestown to any point in West Roxbury east of Walk-hill street, the fare shall be *five dollars and fifty cents*; for *two* passengers, *two dollars and seventy-five cents* each; for *three* passengers, *two dollars* each; for *four* passengers, *one dollar and sixty-two and a half cents* each.

For one adult passenger, from any point in West Roxbury east of Walk-hill street to any point in South Boston, or from any point in South Boston to any point in West Roxbury east of Walk-hill street, the fare shall be *four dollars and fifty cents*; for *two* passengers, *two dollars and twenty-five cents* each; for *three* passengers, *one dollar and sixty-seven cents* each;

for four passengers, *one dollar and thirty-seven and a half cents* each. July 8, 1874.

For one adult passenger, from any point in West Roxbury east of Walk-hill street to any point in East Boston, or from any point in East Boston to any point in West Roxbury east of Walk-hill street, the fare shall be *five dollars and fifty cents*; for two passengers, *two dollars and seventy-five cents* each; for three passengers, *two dollars* each; for four passengers, *one dollar and sixty-two and a half cents* each.

For one adult passenger, from any point in West Roxbury east of Walk-hill street, to any point in Roxbury, or from any point in Roxbury to any point in West Roxbury east of Walk-hill street, the fare shall be *two dollars*; for two passengers, *one dollar* each; for three passengers, *seventy-five cents* each; for four passengers, *sixty-two and a half cents* each.

For one adult passenger, from any point in West Roxbury east of Walk-hill street, to any point in Brighton, or from any point in Brighton to any point in said portion of West Roxbury, the fare shall be *four dollars*; for two passengers, *two dollars* each; for three passengers, *one dollar and fifty cents* each; for four passengers, *one dollar and twenty-five cents* each.

For one adult passenger, from West Roxbury south of Shawmut avenue, to any point in Dorchester, or from any point in Dorchester to any point in West Roxbury south of Shawmut avenue, the fare shall be *three dollars*; for two passengers, *one dollar and fifty cents* each; for three passengers, *one dollar and ten*

July 8, 1874.

cents each; for four passengers, eighty-seven and a half cents each.

For children under four years of age, with an adult, no charge shall be made. For children between four and twelve years of age, when accompanied by an adult, the fare shall be half the price charged for an adult.

Between the hours of twelve o'clock at night and six o'clock in the morning, the fare shall be *fifty cents* for each passenger, in addition to the amount allowed in the preceding sections.

The baggage used by any person in travelling shall be free of charge.¹

Aldermen to
direct and con-
trol carriages at
theatres, etc.
Sept. 21, 1875.

SECT. 23. In any street or square, or at any theatre, museum, or other place of public entertainment, where hackney carriages attend for passengers, the board of aldermen, or any person or persons by them authorized, may give directions respecting the standing of such carriages while waiting for their passengers, and the route they shall go when going to or leaving any such place of entertainment; and if any owner, driver, or other person having the care of any such carriage shall refuse to obey any such order or directions of the board of aldermen, or other person or persons by them authorized, he or they shall be liable to a fine not exceeding twenty dollars for each offence.

Persons infected
with disease
not to ride, etc.
Ibid.

SECT. 24. No owner, driver, or other person hav-

¹ The rates of fare for West Roxbury were published in the *West Roxbury Gazette*, Aug. 8, 1874.

ing charge of any hackney carriage or other vehicle Sept. 21, 1875.
 used as a public conveyance, shall receive, or permit
 to be placed, or convey in any manner, in or upon said
 carriage or other vehicle, any person sick or infected
 with the small-pox or any other contagious disease, or
 the body of any person who had died of small-pox or
 any other contagious disease, under penalty of for-
 feiture of his license.

SECT. 25. No hackney carriage used for the con- Minors not to
drive.
Ibid.
 veyance of passengers shall be driven by a minor,
 unless he be specially licensed therefor by the board
 of aldermen, under a penalty not exceeding twenty
 dollars for each offence.

OMNIBUSES.

SECT. 26. No owner or driver of any omnibus be- Omnibuses not
to stop, etc.
Ibid.
 longing to any line shall stop his omnibus on any part
 of the route assigned thereto, unless called to take or
 leave a passenger, and then for no time longer than
 may be sufficient for such passenger to take his or
 her seat, or to leave such carriage, under a penalty
 not exceeding twenty dollars for each offence.

SECT. 27. No owner or driver of any omnibus shall To keep their
assigned routes.
Ibid.
2 Cush. 562.
 drive his omnibus, or permit the same to be driven, on
 any other route or streets than those that have been,
 or may hereafter be, designated and established by
 the board of aldermen, under a penalty not exceeding
 twenty dollars for each offence.

WAGONS, CARTS, ETC.

Wagons, drays,
etc., to be
licensed.
Sept. 21, 1875.

SECT. 28. Every truck, wagon, dray, cart, sleigh, sled, or handsled, and every other vehicle, except street cars, which shall be used within the city of Boston for the conveyance from place to place, within the said city, of wood, coal, lumber, stone, brick, sand gravel, goods, wares, furniture, merchandise, or building materials, shall be licensed, as hereinafter provided, and shall have placed upon the outside and upon each side of the same the name of the owner and the number of the license, in plain legible words and figures, of not less than one and one-half inches in size, and so that the same may be distinctly seen; and if the owner of any such vehicle shall use, or suffer the same to be used, or if any other person shall use any such vehicle, without being licensed as hereinafter provided, or without having the name and number so placed as aforesaid, they, or either of them, shall be liable to a fine not exceeding twenty dollars for each offence.

Superintendent.
Appointment
and duties.
Ibid.

SECT. 29. On the first Monday of February, annually, or within sixty days thereafter, there shall be appointed by the mayor and aldermen, a suitable person, with police powers, as superintendent of wagons, who shall hold his office for one year from the first Monday in April following said appointment, and who shall, under the direction of the committee on licenses, keep proper records, both alphabetically and numerically, of all trucks, wagons, drays, sleds and carts licensed from time to time by the board of

aldermen, the stands assigned therefor, and the names Sept. 21, 1875. of the owners of such trucks, wagons, drays, sleds or carts, together with such other facts as may be deemed necessary.

It shall be his duty, in common with other police officers, to be vigilant and active in enforcing all the laws of the state, and the rules and orders of the mayor and aldermen, respecting the standing, employment and use of trucks, wagons, drays, sleds or carts, and to make the necessary complaints for the violation of any of such laws or rules; and he shall receive such compensation as the city council shall determine.

SECT. 30. The board of aldermen will, from time Licenses for wagons, etc. to time, grant licenses to such persons, and upon such Ibid. terms as they may deem expedient, to have a stand for, to use, and to drive, any such vehicle as aforesaid within the city of Boston, and they may revoke such licenses at their discretion; and a record of all licenses so granted shall be kept by the superintendent of wagons.

SECT. 31. For every license so granted there shall Fee for license. be paid to the superintendent of wagons the sum of Ibid. one dollar for the use of the city; and the said superintendent shall pay over the same monthly to the city collector.

SECT. 32. All licenses granted as aforesaid shall Date and expiration of license. expire on the first day of July next after the date Ibid. thereof, and no license of any vehicle which has a

Sept. 21, 1875.

stand in any street or square shall be sold, assigned or transferred, without the consent of the board of aldermen, endorsed thereon by the city clerk or his assistant.

Owner to be
licensed.
Ibid.

SECT. 33. The person in whose name a license is taken out for any such vehicle shall, for all the purposes of these orders, be considered as the owner of the same, and liable to all the forfeitures and penalties herein contained, unless, upon the sale of any such vehicle, notice thereof be given to the superintendent of wagons, and the license delivered up to him.

Penalty for
refusal to take
license.
Ibid.

SECT. 34. Any person who may be licensed as aforesaid, either as owner or driver of any of the before-mentioned vehicles, who shall continue to use any such carriage or other vehicle, and shall neglect or refuse to take out his license within thirty days after notice that the same has been granted, shall be liable to a fine not exceeding twenty dollars for each and every day thereafter that he or they shall refuse or neglect to take out said license.

Minors may be
licensed to
drive.

SECT. 35. No truck, cart, wagon, or other vehicle, used for any of the purposes mentioned in the twenty-eighth section, shall be driven by any minor, unless he be specially licensed by the board of aldermen as a minor; and if any owner or other person having the care of any such vehicle shall suffer or permit an unlicensed minor to drive any such vehicle, he or they

shall be liable to a fine not exceeding twenty dollars Sept. 21, 1875.
for each offence.

SECT. 36. All drivers and other persons having Rate of speed,
etc.
Ibid. the care and ordering of any truck, cart, wagon, sled or dray, passing in or through the streets, squares or lanes of the city, shall drive their horses or beasts at a moderate footpace, and shall not suffer or permit them to trot beyond the speed prescribed by the ordinance of the city;¹ and such drivers or other persons shall hold the reins in their hands to guide and restrain such horses or beasts, or they shall walk by the head of the shaft or wheel horse, either holding or keeping within reach of the bridle or halter of the horse or other beast. And any person offending against either of the provisions of this section shall be liable to a fine not exceeding twenty dollars for each offence.

SECT. 37. No truck or dray shall be used in this Size of drays,
trucks, etc.
Ibid. city, the length whereof, from the end of the shaft to the extreme end of the side, shall be greater than twenty-four feet and six inches, under a penalty not exceeding twenty dollars every time such truck or dray is used.

SECT. 38. No person shall cause to be carried on Weight of load,
etc.
Ibid. any truck, dray or cart any load the weight whereof

¹ By ordinance passed June 26, 1876, the rate of speed shall not exceed *seven miles* an hour, except in those portions of the city included within the limits of wards numbered 22, 23, 24 and 25; and in those wards the rate shall not exceed *twelve miles* an hour. See "Streets," p. 785.

Sept. 21, 1875. shall exceed three tons, except an article which cannot be divided; and any person violating either of the provisions of this section shall be liable to a fine not exceeding twenty dollars for each offence.

CARRIAGES IN GENERAL.

Carriages not to
stand in streets
except, etc.
Ibid.

SECT. 39. No owner, driver or other person having the care or ordering of any chaise, carryall, hackney carriage, truck, cart, wagon, hand-cart, sleigh, sled, hand-sled, horse-car or any other vehicle whatsoever, new or old, finished or unfinished, with or without a horse, or horses, or other animal or animals, harnessed thereto, shall suffer the same to stop in any street, square, lane or alley of this city more than five minutes, without some proper person to take care of the same, or more than twenty minutes in any case; and any person so offending shall be liable to a fine not exceeding twenty dollars for each offence. But this section shall not apply to the carriages of the city officers at city buildings, of physicians while visiting the sick, or to the vehicles of market or provision men who may stand with the same without the limits of Faneuil-hall market, until eleven o'clock in the forenoon, at such places in the city as the board of aldermen may designate for the purpose of vending provisions.

Bells to be
attached in
winter.
Ibid.

SECT. 40. No carriage or vehicle of any description, whether of burden or pleasure, shall be driven through any part of the city of Boston during any time that the snow or ice shall be upon or cover the streets, squares, lanes or alleys of the said city, un-

less there shall be three or more bells attached to the horse or horses, or to some part of the harness thereof, under a penalty not exceeding twenty dollars for each offence. Sept. 21, 1875.

SECT. 41. No owner, driver, or other person having the care of any truck, cart, wagon, sled, horse-car or other vehicle, whether used for burden or pleasure, shall stop or place such vehicle at or near the intersection of any street, lane or alley, in such manner as to cross the footway or flagstone, or prevent foot passengers from passing the street, lane or alley in the direction or line of the footway or flagstones on the side of such street, lane or alley, under a penalty not exceeding twenty dollars; and any person who shall have so placed any such vehicle as aforesaid, and shall not immediately on the request of any foot passenger cause the same to be removed, or who shall absent himself so that such request cannot be immediately made and complied with, shall be liable to an additional penalty not exceeding twenty dollars. Not to obstruct footwalks. Ibid.

SECT. 42. Every driver of any truck, wagon, horse-car, or any other vehicle, within the city of Boston, shall remain near to such vehicle while it is unemployed, or standing in the streets or squares of the city, unless he shall be necessarily absent therefrom in the course of his duty and business, and shall so keep his horse or horses, and his carriage or other vehicle, that they shall not obstruct the said streets or squares or other public passages in any Drivers to remain near vehicles. Ibid.

Sept. 21, 1875. other manner than is allowed by law, or the ordinances of the city council, or orders of the board of aldermen. And no driver of any carriage, or other vehicle, while waiting for employment, shall snap or flourish his whip. And any person who shall violate either of the provisions of this section shall be liable to a fine not exceeding twenty dollars for each offence.

Obstructions
when loading
or unloading.
Ibid.

SECT. 43. No truck, cart, horse-car, or other vehicle, shall be so placed in any street within the city, by the owner, driver, or other person having the care and ordering thereof, as to prevent the passing of any truck, cart, street-car or carriage of any description, unless it be for a reasonable time, not exceeding six minutes, for the loading or unloading of coal or heavy articles, the weight of which in any one parcel or package shall not be less than six hundred pounds; and for the loading or unloading of any dirt, brick, stone, sand, gravel, coal, or of any articles, whether of the same description or not, the weight of which in any one package shall be less than five hundred pounds. No truck, cart, wagon, sleigh, sled, horse-car, or other vehicle, shall be wholly or in part backed or placed across any street, square, lane or alley, or upon any flagstones or crossings of the same, or upon any sidewalk or footway of the same, but shall be placed lengthwise with, and as near as possible to, the abutting stones of the sidewalk or footway; and any owner or driver, or other person having the care of any such vehicle, who violates either of the provisions of this section,

shall be liable to a fine not exceeding twenty dollars Sept. 21, 1875.
for each offence.

SECT. 44. Every owner, driver, or other person Carriages to stand near sidewalk.
having the care and ordering of any cart, truck, wagon, or sled, or other vehicle, shall place his horse and cart, truck, wagon, or sled, or other vehicle, lengthwise, as near as possible to the curb or abutting stone of the foot or sidewalk of the street in which he shall stand; and no more than one range of carts, trucks, or more vehicles, shall stand in streets not more than thirty feet wide, and not more than one range on each side in streets which are of a greater width than thirty feet, and in squares and other open places they shall be arranged by said owners, drivers, or other persons, in conformity to the directions of the board of aldermen, or of any person by them appointed; and any person who shall violate the provisions of this section, or shall neglect or refuse to obey such directions as aforesaid, shall be liable to a fine not exceeding twenty dollars.

SECT. 45. No owner or driver of any hackney carriage, truck, wagon, dray, cart, sleigh, sled or any other vehicle whatsoever, with horses or any other beasts harnessed thereto, shall, unless occupying a stand by license from the board of aldermen, bait or feed any such beasts in any street, lane, square or alley of the city, under a penalty not exceeding twenty dollars for each offence. And no owner or driver of any vehicle, having a license to occupy a stand in any street, lane, square or alley of the city, Horses, etc., not to be fed in streets. August 28, 1876.

August 28, 1876. shall bait or feed his horse or horses or other beasts in any street, lane, square or alley of the city, except in such place as shall be designated by the superintendent of hacks or the superintendent of trucks and wagons, and upon the conditions that the horse or horses or other beasts shall be under the care of some suitable person while being baited or fed, and shall be properly secured to prevent them from getting beyond the control of the persons having charge of them. Any violation of the foregoing conditions shall be sufficient cause for the revocation of a license. All vehicles without horses harnessed thereto must be removed from the streets during the night, and on Sundays, otherwise they will be removed by the city at the expense of the owners.¹

Distance between vehicles.
Sept. 21, 1875.

SECT. 46. No owner, driver, or other person having the care of any horse-car, chaise, carryall, hackney carriage, truck, dray, cart, wagon, hand-cart, sleigh, sled, hand-sled, or other vehicle whatsoever, finished or unfinished, with or without a horse or horses, or other animal or animals harnessed thereto, shall drive or place, or allow to be driven or placed, said vehicle, or the horse or horses, or other animal or animals attached thereto, within ten feet of the vehicle in front of the same, at any footpath or crossing in any of the streets or ways of this city; and such owner, driver or other person shall, when requested by any police officer, stop such vehicle at any place in the street for the purpose of allowing persons on foot to cross the

Police may stop vehicles.

¹ Order passed by board of aldermen, Aug. 28, 1876. Published in *Journal Traveller and Post*, for two weeks.

street in safety. No person shall be allowed to drive, Sept. 21, 1875. or have the care of, more than one vehicle in the streets or public places of the city; and every vehicle with a horse or horses, or other animal or animals, harnessed thereto, shall be under the care of some competent person. Any person offending against either of the provisions of this section shall be liable to a fine not exceeding twenty dollars for each offence.

SECT. 47. No owner, driver, or other person, hav- Vehicles not to be driven against any person, etc. Ibid. ing the care of any horse-car, chaise, carryall, hackney carriage, truck, dray, cart, wagon, hand-cart, sleigh, sled, hand-sled, or other vehicle, shall drive, or allow to be driven, the car or other vehicle of which he has the care, against, or foul of, any person or vehicle, or anything whatever, in the streets of the city; nor shall he drive, or allow to be driven, the car, or other vehicle of which he has the care, around the corner of any of the streets in this city with the horse or horses attached thereto, travelling at a faster gait than a walk.¹ Any person offending against either of the provisions of this section shall be liable to a fine not exceeding twenty dollars for each offence.

SECT. 48. No license shall be granted for any Owner to be licensed, etc. Ibid. hackney carriage, truck, wagon, dray, cart, hand-cart, sleigh, sled, hand-sled, or other vehicle whatsoever, for the conveyance of passengers or property for hire within the city, except to the owner or lessee thereof. If any person, other than the owner or lessee thereof,

¹ See § 10 of statutes relating to carriages, p. 150.

Sept. 21, 1875.

shall take out a license for any such carriage, truck wagon, dray, cart, sleigh, sled, hand-sled, or other vehicle, he shall be liable to a penalty not exceeding twenty dollars for each offence.

When any owner or lessee of such carriage, truck, wagon, dray, cart, sleigh, sled, hand-sled, or other vehicle, who has received a license therefor, shall cease to be such owner or lessee, he shall, within ten days after ceasing to be such owner or lessee, surrender his license to the superintendent of hacks or of wagons, under a penalty not exceeding twenty dollars.

Persons not to
ride on steps of
vehicles.
Ibid.

SECT. 49. Whoever rides upon the steps of any omnibus, or upon any hackney carriage, truck, wagon, dray, cart, sleigh, sled, or other vehicle, without permission of the driver thereof, or upon the platform of any horse-car, without the permission of the driver or conductor thereof, shall be liable to a penalty not exceeding twenty dollars for each offence.

Horses to walk
upon bridges.
Ibid.

SECT. 50. No driver, or other person having the care of any street-car, hackney carriage, truck, dray, cart, wagon, sleigh, sled, or other vehicle, shall drive, or allow to be driven, the car or other vehicle of which he has the care, with the horse or horses attached thereto, at a faster gait than a walk over any draw-bridge within the city of Boston. Any person violating the provisions of this order shall be liable to a fine not exceeding twenty dollars for each offence.

Distance be-
tween horse-
cars.
Ibid.

SECT. 51. No owner, driver, or other person having the care or charge of any horse-car, shall drive,

or allow said car to be driven, so that the front part of the platform of said car shall be less than thirty feet from the rear part of the preceding car on the same track, except at stations or in case of accident, when it may be necessary to connect two cars together. Any person offending against the provisions of this section shall be liable to a penalty not exceeding twenty dollars for each offence.

Sept. 21, 1875.

CEMETERIES.¹

STATUTES.

GENERAL PROVISIONS.

1. Each town and city shall provide one or more suitable places for the interment of persons dying within its limits. Burial-places.
G. S. c. 28, § 4.
103 Mass. 106.
2. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town or of the mayor and alderman of the city in which the same is situated.² Private land not
to be used for,
except, etc.
Ibid. § 5.
99 Mass. 281.
3. For every interment in violation of the foregoing section in a town or city in which the notice prescribed by Gen. Sts. c. 28, § 7, has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars. Penalty for vio-
lation.
Ibid. § 11.
4. Whoever wrongfully destroys, impairs, injures or removes a tomb, gravestone, building, fence, railing, or other thing lawfully erected in or around a place of burial or cemetery, or a tree, shrub, or plant situate within its limits, or wrongfully injures a walk or path therein, or places rubbish or offensive matter within a place of burial or cemetery, or commits any nuisance therein, or in any way For injuring
tombs, etc.
Ibid. § 12.
2 Allen, 512.
7 Allen, 299.
100 Mass. 181

¹ For regulations in relation to burials, and matters over which the board of health has control, see "Health," p. 400.

² The provisions of this statute are constitutional. 118 Mass. 354.

G. S. c. 28, § 12. desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purpose of burial shall be deemed sufficient evidence of title.

Injuring or defacing tombs, memorials of the dead, etc. G. S. c. 165, § 39. 100 Mass. 181. 5. Whoever wilfully destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, or other structure or thing placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or ornament of any tomb, monument, gravestone, or other structure before mentioned, or any enclosure for the burial of the dead, or wilfully destroys, mutilates, removes, cuts, breaks, or injures any tree, shrub, or plant placed or being within any such enclosure, or wantonly or maliciously disturbs the contents of a tomb or grave, shall be punished by fine not exceeding five hundred dollars nor less than ten dollars, or by imprisonment in the jail not exceeding one year.

Making roads, canals, etc., through burial-grounds. Ibid. § 40. 6. Whoever lays out, opens, or makes a highway or townway, or constructs a railroad, turnpike, or canal, or any other thing in the nature of a public easement, over, through, in, or upon any part of such enclosure, being the property of a city, town, parish, religious society, or of private proprietors, used or appropriated for the burial of the dead, unless an authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society, or proprietors respectively is first obtained, shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the jail not exceeding one year.

Money may be furnished to decorate soldiers' graves. 1870, c. 169. 7. Towns may at legal meetings grant and vote such sums as they judge necessary for the purpose of keeping in repair or decorating the graves within their limits, of soldiers or sailors who have died in the military or naval service of the United States, or the monuments or other memorials erected to their memory.

Persons holding interest in public burying ground may deposit five hundred dollars with town treasurer. 1870, c. 225. 8. Any person holding, occupying, or interested in any lot in the public burying grounds in any city or town in this Commonwealth, may deposit with the treasurer of any such city or town any sum of money, not exceeding five hundred dollars, which sum thus deposited, shall be entered upon the books of the treasury, and held in accordance with the provisions of the ordinances or

by-laws of such city or town, in relation to the interment of the dead. 1870, c. 225.

9. The purpose for which such deposit may be made, shall be to provide for the care, keeping and preservation of the fences, trees, shrubbery, monuments, tombs, and other appendages of the lot of such person. For preservation of fences, trees, etc. Ibid. § 2.

10. Any city or town may receive money for the purpose aforesaid, and allow interest for the same at a rate not exceeding six per centum per annum; and may establish any by-laws or ordinances not repugnant to the laws of this commonwealth, as may be necessary for the purposes of this act. Towns may receive, deposit and allow interest at six per cent. Ibid. § 3.

11. This act shall be subject to amendment, alteration or repeal, at the pleasure of the legislature. Subject to amendment or repeal. Ibid. § 4.

MOUNT HOPE CEMETERY.

12. The city of Boston is hereby authorized to purchase and hold land for a public cemetery, in any town in this commonwealth, and to make and establish all suitable rules, orders, and regulations for the interment of the dead within the limits of the said city: *provided*, that the consent of any town, in which the said cemetery is proposed to be located, shall first be obtained for the purpose.¹ City of Boston may establish a cemetery in any town in the commonwealth, with its consent. 1849, c. 150. 8 Cush. 66. 103 Mass. 94.

CEDAR GROVE CEMETERY.

13. The town of Dorchester [since annexed to Boston] is hereby authorized to elect by ballot, at a town meeting duly called, Commissioners of cemetery. 1868, c. 68, § 1.

¹ Under the authority of this statute Mount Hope Cemetery was established. It is situated in West Roxbury, about five miles from the city hall, and contained originally eighty-four and three-fourths acres. It was first under the charge of a private corporation organized under the General Statutes, Nov. 10, 1851, and was consecrated with appropriate ceremonies June 24, 1852. Sales of four hundred and twenty-seven lots were made by the company, and some improvements were made. By deed dated July 31, 1857 (recorded with Norfolk deeds, lib. 258, fol. 165), it was conveyed to the city for the sum of \$35,000. Four and three-fourths acres at the westerly end have been set off for the benefit of the inhabitants of the city, free of charge, and that portion is called the "city cemetery." In 1868 the city purchased an additional lot of twenty acres on the southerly side for \$14,000; so that the cemetery contains, at the present time, an area of about one hundred and five acres.

1868, c. 68, § 1.

a board of five commissioners, who shall have the sole care, superintendence and management of the cemetery situated in said town, between Adams street and Neponset river, one member of which board shall be elected for the term of five years, one for four years, one for three years, one for two years, and one for one year; said terms to expire with the end of the municipal or official year; said board may be organized by the choice of a chairman and clerk from their number, and a major part of the board shall be a quorum for the exercise of the powers of said office. In case of a vacancy occurring in the board, by death, non-acceptance, disability, resignation or removal during any municipal or official year, the remaining members shall notify the board of selectmen of Dorchester in writing, thereof, and of the time and place appointed for a meeting of the two boards for the purpose of filling such vacancy, at least two weeks before the time appointed for said meeting; and, in pursuance of such notice, said two boards shall proceed to fill such vacancy, until the end of the then current or official year, by electing, upon joint ballot, a suitable person thereto; and at each successive annual election of town officers after the year one thousand eight hundred and sixty-eight, said town shall elect by ballot a suitable person or persons to serve on said board for the remainder of any unexpired term or terms, and for such full term of five years as shall expire before the next annual election.

Portion of cemetery to be set apart for public burial place.
Ibid. § 2.

14. Said board of commissioners shall set apart a portion of said cemetery, as a public burial place for the use of the inhabitants of the town of Dorchester, free of charge therefor; and they may lay out said cemetery in suitable lots or other subdivisions, with necessary paths and avenues; may plant, embellish and ornament the same; may inclose and divide the same with proper fences, and erect such suitable edifices, appendages and conveniences as they shall, from time to time, deem convenient; and may make all such by-laws, rules and regulations in execution of their trust, not inconsistent with the laws of the commonwealth, as they may deem expedient.

Rules, etc.

May convey, by deed, rights of burial and of erecting tombs, etc.
Ibid. § 3.

15. Said board of commissioners shall have authority to grant and convey to any person, by deed executed in such manner and form as they may prescribe, the sole and exclusive right of burial,

and of erecting tombs, cenotaphs and other monuments, upon such terms and conditions as they shall by rules and regulations prescribe. 1868, c. 68, § 3.

16. The proceeds of sales of lots or rights of burial in said cemetery shall be paid into the town treasury of Dorchester, be kept separate from its other funds, and be devoted to the improvement and embellishment of the cemetery as aforesaid, subject to the order of the board of commissioners. Proceeds of sales to be used for improvement of cemetery. Ibid. § 4.

17. Said commissioners are authorized to take and hold any appropriation, grant, donation or bequest upon trust, to apply the same, or the income thereof, for the improvement or embellishment of said cemetery, or for the erection, repair, preservation or renewal of any monument, fence or other erection therein, or for the care, improvement or embellishment of any lot or its appurtenances, in any manner or form consistent with the purposes for which said cemetery is established, according to the terms of such appropriation, grant, donation or bequest; and may, by an agreement or obligation, bind themselves and their successors so to apply the same. Commissioners may hold in trust property for embellishment of cemetery. Ibid. § 5.

18. Any sums of money so received by said commissioners shall be invested by the town treasurer of Dorchester, under the direction of said commissioners, and all the same, and all property so received, shall ever be kept separate from any other moneys or property belonging to said town, and the income of the same shall be received by its treasurer, be subject to the order of said commissioners, and be appropriated by them in such a manner as shall, in their opinion, best promote the purposes for which such appropriation, grant, donation or bequest is made; and the town shall be responsible for the good faith of its treasurer and of said commissioners. Trust funds, etc., how to be invested and appropriated. Ibid. § 6.

19. Said commissioners shall not incur debts or liabilities for purposes other than as aforesaid, nor to an amount exceeding the amount of the funds subject to their order as aforesaid; and they shall annually, in the month of May, make and render a report in writing of all their acts and doings, of the condition of said cemetery, an account of their receipts and expenditures for the same, and of the funds subject to their order. Limitation of indebtedness. Ibid. § 7. 1874, c. 89. Commissioners to make annual report.

20. The lands purchased and set apart, and the lands which

Cemetery lands
to be exempt
from taxes.
1868, c. 68, § 8.

may be hereafter purchased and set apart, by the town of Dorchester, for the purpose of said cemetery, shall be exempt from all public taxes so long as the same shall be dedicated for such purpose.

Act void unless
accepted by
town.

21. This act shall be void unless accepted by a vote of said town at a meeting duly called, within four months from its passage.¹

ORDINANCES.

MOUNT HOPE CEMETERY.²

Election of
trustees, Sept.
17, 1869.

SECTION 1. In the month of January annually there shall be elected by concurrent vote of the city council, to be trustees of Mount Hope cemetery, one member of the board of aldermen, and two members of the common council, who shall hold their offices for one year from the first Monday in January, and until others are elected in their place, unless sooner removed; and annually, in March or April, there shall be elected by concurrent vote of the city council two citizens at large, who shall hold their offices for two years from the first Monday in May, in the year of their election, and until others are elected in their respective places. The persons so elected shall constitute the board of trustees of said cemetery. They shall at all times be subject to removal from office by the city council, for cause; and vacancies may be filled at any time for the unexpired term in the same manner as the original appointments were made. Two, at least, of said trustees elected from the citi-

¹ Accepted by town of Dorchester April 6, 1868.

² An ordinance in relation to Mount Hope cemetery, passed December 21, 1857; amended December 30, 1864; further amended September 17, 1869.

zens at large, shall, at the time of their election, own a lot in said cemetery. Sept. 17, 1869.

SECT. 2. The persons elected from the city council shall enter upon their duties as members of said board of trustees forthwith; and those elected from the citizens at large shall enter upon their duties on the first Monday in May. On the first Monday in May, annually, the members shall meet and organize themselves as a board, by the choice of one of their number as president; and they may make such rules and regulations for their own government, and for the government of all subordinate officers by them appointed, as they may deem expedient. Said board shall have the sole care, superintendence, and management of the Mount Hope cemetery. A majority of the whole board shall be necessary to constitute a quorum for the transaction of business. Organization of the board of trustees. Ibid.

SECT. 3. The board of trustees shall set apart and appropriate a portion of said cemetery as a public burial-place, for the use of the inhabitants of the city of Boston, free of any charge therefor; and they shall lay out said cemetery in suitable lots, or other subdivisions, for family or other burial-places, with all the necessary paths and avenues, and may plant and embellish the same with trees, shrubs, flowers, and other rural ornaments; and may enclose and divide the same with proper fences, and erect or annex thereto such suitable edifices, appendages, and conveniences as they may from time to time deem expedient; and said board may make all necessary Free burial-place to be set off. Dec. 21, 1857. Cemetery to be laid out, etc. Ibid.

Trustees may
make by-laws.
Dec. 21, 1857.

by-laws, rules and regulations, in the execution of their trust, not inconsistent with the ordinances of the city or the laws of the commonwealth, as they may deem expedient.

Trustees may
sell rights of
burial, etc.
Ibid.

SECT. 4. The board of trustees shall have authority to grant and convey to any person or persons, by deed duly executed, the sole and exclusive right of burial, and of erecting tombs, cenotaphs, and other monuments, in any of the designated lots or subdivisions of said cemetery, upon such terms and conditions as they may, by their rules and regulations, prescribe.

Proceeds of
sales to be kept
separate.
Ibid.

SECT. 5. The proceeds of the sales of lots, and rights of burial in said cemetery shall be paid into the city treasury, and kept separate from any other funds of the city, and subject to the order of said trustees; and such proceeds shall be devoted to the liquidation of all amounts paid by the city on account of said cemetery, either for land, or for the improvement and embellishment thereof, under the direction of said board of trustees, who shall also have the control of any appropriation which may be made to the cemetery by the city council.

Trustees may
hold, etc.,
bequests.
Ibid.

SECT. 6. The board of trustees are authorized to take and hold any grant, donation, or bequest of property, upon trust; to apply the same, or the income thereof, for the improvement or embellishment of the said cemetery, or for the erection, repair, preservation, or renewal of any monument, fence, or

other erection, or for the planting or cultivation of trees, shrubs, or plants in and around any lot; or for improving the said premises in any other manner or form consistent with the purposes for which said cemetery is established, according to the terms of such grant, donation, or bequest. And whenever any such grant, donation, or bequest, or any deposit, is made by the proprietor of any lot in said cemetery, for the annual repair, preservation, or embellishment of such lot and the erections thereon, the trustees may give to such proprietor, or his representative, an agreement or obligation, in such form and upon such terms and conditions as they may establish, binding themselves and their successors to preserve and keep in repair said lot forever, or for such period as may be agreed on.

SECT. 7. Any sums of money so received by the trustees shall be invested by the city treasurer in public stocks, or mortgages of real estate, and shall always remain separate from, and independent of, any other moneys or property belonging to the city of Boston, and free from the control of the city council. And the income of such fund or funds shall be received by the city treasurer, subject to the order of the trustees, and shall be appropriated by them in such manner as may, in their opinion, best promote the purpose for which said grants, donations, bequests, or deposits, are made.

Requests to be
invested; how
and for what.
Ibid.

SECT. 8. The city shall be responsible for the good faith of said trustees, and of the city treas-

City liable for
doings of trus-
tees, etc.
Ibid.

Dec. 21, 1857.

urer, in the execution of any trust which they may assume pursuant to the foregoing provisions. But the trustees shall not be liable to make any renewal of any monument, or other erection, on any lots in said cemetery, unless such liability is expressed in the agreement under which they accept any grant, donation, or bequest, for the repair or preservation of such lots.

City registrar
to be secretary
of trustees.
Ibid.

SECT. 9. The city registrar shall act as secretary of said board of trustees; he shall receive all applications for lots and rights of burial, and, under the direction of the trustees, shall make all deeds of the same, and pay all sums of money received on account of the cemetery, to the city treasurer, and perform such other duties in relation to the cemetery as the trustees may from time to time require.¹

Form of deed
for conveyance
of lots.
Ibid.

SECT. 10. The form of the deeds to be executed for the conveyance of lots in said cemetery, by said trustees, shall be as follows, viz.: —

Know all men by these presents, that the city of Boston, in the county of Suffolk and commonwealth of Massachusetts, in consideration of ——— dollars, paid to it by ——— ———, the receipt whereof is hereby acknowledged, doth hereby grant, bargain, sell, and convey to said ——— ——— heirs and assigns, one lot of land in the rural cemetery in Dorchester and West Roxbury, called the Mount Hope cemetery, and the sole and exclusive right of burial

¹ By ordinances passed May 24, 1872, and Nov. 5, 1873, the records and files of the board are open to public inspection. See "Records," *post*, p. 659.

of the dead therein: the said granted lot contains Dec. 21, 1857.
 ——— superficial square feet, and is numbered ———
 on the plan of said cemetery, which is in the possession of the board of trustees, having the care, superintendence, and management thereof, and may be inspected by the said grantee, ——— heirs and assigns, at all reasonable times. To have and to hold the aforegranted premises unto the said ——— heirs and assigns forever; but subject to the restrictions, limitations, and conditions, and the privileges following, viz.: —

First. That the proprietor of the said lot shall Restrictions, conditions and privileges. have the right to enclose the same with a wall or fence, not exceeding one foot in thickness, which may be placed on the adjoining land of said city, exterior to said lot.

Second. That the said lot shall not be used for any other purpose than as a place of burial for the dead; and no trees within the lot or border shall be cut down or destroyed, without the consent of the said trustees.

Third. That the proprietor of said lot shall have the right to erect monuments, cenotaphs, or stones, commemorative of the dead; or to cultivate trees, shrubs, or plants in the same.

Fourth. That the proprietor of said lot shall erect at ——— own expense, suitable landmarks, of stone or iron, at the corners thereof, and shall cause the number thereof to be legibly and permanently marked upon the premises; and if the proprietor shall omit for thirty days after notice to erect such landmarks and to mark the number, the trustees shall have

Dec. 21, 1857.

authority to have the same done at the expense of the said proprietor.

Fifth. That if any trees or shrubs in said lot shall become in any way detrimental to the adjacent lots or avenues, or dangerous, or inconvenient, it shall be the duty of said trustees, for the time being, to enter into said lot, and remove said trees or shrubs, or such parts thereof as are thus detrimental, dangerous, or inconvenient.

Sixth. That if any monument, effigy, cenotaph, or other structure whatever, or any inscription, be placed in or upon said lot, which shall be determined by a majority of said trustees, for the time being, to be offensive and improper, the said trustees, or a majority of them, shall have the right, and it shall be their duty, to enter upon said lot and remove said offensive or improper object or objects.

Seventh. No fence shall, at any time, be erected or placed in or around said lot, the materials or design of which shall not first have been approved by said trustees or a committee of them.

Eighth. No tomb shall be constructed or allowed within the bounds of the cemetery unless by special permission of said board of trustees, and in such places and in such manner as the trustees shall direct. And no proprietor shall suffer the remains of any person to be deposited within the bounds of his lot for hire.

Ninth. The said lot shall be indivisible; and upon the death of the grantee, the devisee of said lot, or the heir-at-law, shall be entitled to all the privileges of the original grantee, and if there be more than one devisee

or heir-at-law, the said trustees shall designate the one who shall have possession of the said lot; and in making such designation, said trustees shall, as far as they conveniently may, give preference to males over females, and to proximity of blood, priority of age, and with due regard to proximity of residence. Dec. 21, 1857.

Tenth. The said lot shall be holden subject to all by-laws, rules and regulations, made, and to be made, by the said board of trustees, in pursuance of authority granted to them in and by any ordinance or ordinances of the city of Boston. And the said city of Boston hereby covenants to and with the said ——— heirs and assigns, that the said city is lawfully seized in fee-simple of the aforegranted premises and of the ways leading to the same from the highway, that the granted premises are free from all incumbrances, that the said city hath good right to sell and convey the same to the said ———, in the manner and for the purpose aforesaid, and will WARRANT and defend the same unto the said ———, heirs and assigns forever.

IN WITNESS WHEREOF, the said city of Boston hath caused these presents to be signed by ———, the chairman of the said board of trustees, to be countersigned by ———, their secretary, and the treasurer of the said city, and to be sealed with its common seal, this ——— day of ———, in the year of our Lord eighteen hundred and ———.

Signed, sealed, and delivered

in presence of

—— ——— *Chairman.*

—— ——— *Secretary.*

—— ——— *City Treasurer.*

Dec. 21, 1857.

CITY OF BOSTON.

City Registrar's office, 18 .

I hereby certify that the foregoing deed has been received, entered and recorded in this office, in the book provided for the purpose, being book No. —, and page No. —.

— —, *City Registrar.*

Deeds to be
signed by chair-
man, etc.
Ibid.

SECT. 11. All deeds executed in conformity to the preceding section shall be signed by the chairman of the board of trustees of Mount Hope cemetery, and countersigned by their secretary, and the city treasurer, and shall have the city seal affixed thereto.

Deeds to be
recorded.
Ibid.

SECT. 12. Said deeds shall be recorded by the city registrar in a book provided for that purpose, and kept in his office.

Trustees shall
make report to
city council.
Sept. 17, 1869.

SECT. 13. In the month of May, annually, said board of trustees shall submit to the city council a report in print, made up to, and including, the thirtieth day of April preceding, containing a statement of the condition of the cemetery, and an account, in detail, of the receipts and expenditures during the year.

CHIMNEYS AND CHIMNEY-SWEEPERS.

ORDINANCES.¹

SECTION 1. The board of aldermen, upon com-
 plaint made to them, or upon their knowledge and
 view of any defective chimney or fireplace within this
 city, shall, from time to time, take effectual care that
 the same shall be examined and inspected; and, when
 in their opinion the safety of the city requires it, shall
 order the same to be immediately amended or re-
 paired if the same can be properly done; otherwise,
 to be taken down and demolished.² And if the owner
 or owners of such defective chimney or fireplace
 shall wilfully neglect or refuse to amend, repair, or
 take down the same, the said owner or owners shall
 forfeit and pay a sum not less than one dollar nor
 more than twenty dollars: *provided*, that such owner
 or owners shall have been served with an order in
 writing from the board of aldermen to amend, repair
 or take down the said defective chimney or fireplace
 (as the case may be), duly certified by the city clerk;
 an attested copy of which order, made and certified
 by the said city clerk, shall be served upon such
 owner or owners, by any person appointed for that
 purpose by the said board. And the board of alder-
 men, for the time being, shall have full power and
 authority to order and direct, and they are hereby

Chimneys to be
 examined and
 repaired.
 Dec. 28, 1825.

Penalty.

¹ An ordinance for the regulation of chimneys and chimney-sweepers, passed December 28, 1825. An ordinance establishing a fire department, etc., passed June 4, 1850. § 26.

² For provisions in cases of dilapidated and dangerous buildings, see "Buildings," p. 126.

Dec. 25, 1825.

Defective chim-
neys must be
abated.

required to cause, such defective chimney or fireplace to be taken down and abated as a common nuisance; and the owner or owners of such defective chimney or fireplace shall in such case bear, satisfy, and pay the whole expense and charge of abating such nuisance, and of taking down and removing such defective chimney or fireplace.

Sweepers of
chimneys to be
licensed.
Ibid.

SECT. 2. The board of aldermen are authorized and directed to appoint and license, from time to time, suitable persons to be sweepers of chimneys in this city, who, together with their apprentices, and others by them employed, shall wear such badges as the board shall appoint and direct, and whose wages and compensation for their work and service in sweeping chimneys shall not exceed the rates which have been fixed and appointed by the mayor and aldermen, or may hereafter be fixed and appointed by the board of aldermen. And if any person who shall not be appointed and licensed as aforesaid, shall presume, either by himself or by his apprentices, or others by him employed, to undertake the sweeping of any chimney in this city, excepting such as are in his own occupation, every such person shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, for every offence of which he shall be duly convicted. And no inhabitant of this city shall employ any person (excepting his, or her, own servant, being in his, or her, house), to sweep any of his, or her, chimneys within the city, other than one of the chimney-sweepers appointed and licensed as aforesaid by the board of aldermen; and

Penalty.

if any inhabitant of this city shall employ any person other than the chimney-sweepers appointed and licensed as aforesaid, in violation of the provisions of this ordinance, he, or they, shall forfeit and pay a fine not less than one dollar nor more than ten dollars. Dec. 28, 1825.

SECT. 3. When, and so often as, complaint is made to the board of aldermen by any chimney-sweeper appointed and licensed as aforesaid, or by any inhabitant of the city, against any person or persons, that their chimneys are unsafe by reason of foulness, the said board, or any other person by them empowered, is hereby directed to inspect and view, or order to be inspected and viewed, and to them reported, every such chimney complained of as aforesaid; and if upon such view, inspection, and report, they shall, either from their own view, or the report of the person appointed to view as aforesaid, judge the same to be unsafe and dangerous to make and keep fire therein by reason of foulness, they shall give notice thereof to the person or persons in the possession or occupancy of the house or tenement to which such chimney or chimneys belong; and the occupier or occupiers of such house or tenement shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, for every day in which fire shall be made and kept in such chimney or chimneys respectively by such occupier or occupiers after notice shall have been given them in manner aforesaid, until the same shall be properly and sufficiently swept. Foul chimneys,
how to be ex-
amined.
Ibid.
Fires not to be
kept in them.

Penalty for
burning chim-
neys, etc.
June 4, 1850.

Proviso.

SECT. 4. If any chimney, stove-pipe, or flue within the city shall take, or be set on, fire, the occupant of the house to which such chimney, stove-pipe, or flue appertains, or the person or persons so setting the same on fire, shall forfeit and pay the sum of two dollars: *provided*, that it shall be lawful for any person to set fire to, and burn, his chimney, stove-pipe, or flue between sunrise and noon, if the buildings contiguous are wet with rain or covered with snow; and it shall be the duty of the chief or other engineers of the fire department to report to the board of aldermen the name of every person liable to the penalty provided by this section, in their first returns thereafter.

CITY CLERK.

STATUTES.

City clerk.
Charter.
1854, c. 448, § 30.
97 Mass. 39.

1. The mayor, aldermen, and common council, in convention in the month of January, shall choose a clerk for the term of one year, and until another person is duly chosen and qualified in his stead, who shall be sworn to the faithful discharge of the duties of his office, and shall be removable at the pleasure of the board of aldermen, — the mayor thereto consenting. He shall be denominated the city clerk, and it shall be his duty to keep a journal of the acts and proceedings of the board of aldermen, to sign all warrants issued by them, and to do such other acts in his said capacity, as may lawfully and reasonably be required of him; and to deliver over all journals, books, papers, and documents entrusted to him as such clerk, to his successor in office immediately upon such successor being chosen and qualified as aforesaid, or whenever he may be thereunto required by the aldermen. The city clerk thus chosen and qualified shall continue to have all the

powers and perform all the duties now by law belonging to him. 1854, c. 448, § 30.

2. In case of a vacancy in the office of city clerk, from any cause, the same shall be filled in the manner provided in the preceding section. Vacancy in office of city clerk. Ibid. § 31.

3. In case of the temporary absence of the city clerk, the mayor, by and with the advice and consent of the board of aldermen, may appoint a city clerk *pro tempore*. Absence of city clerk. Ibid. § 32.

4. Any city in the commonwealth may establish, by ordinance, the office of assistant city clerk, who shall be appointed in such manner and have such duties and powers, now belonging to the office of city clerk, as such ordinance shall prescribe and determine. Office of assistant city clerk established. 1869, c. 72, § 1.

5. Any document or paper certified or attested by an assistant city clerk shall be admissible in evidence in all courts of this commonwealth, in the same manner, and to the same extent, as if such document or paper were certified or attested by a city clerk. His certificate to have same force as that of city clerk. Ibid. § 2.

ORDINANCE.¹

SECTION 1. The city clerk, under the direction and control of the board of aldermen, shall have the care and custody of the city records, and of all documents, maps, plans, and papers, respecting the care and custody of which no other provision is made. He shall attend and keep the records at all meetings of the city council. City clerk to have care and custody of city records, etc. Sept. 9, 1850, § 12.

SECT. 2. In the month of July, in the year eighteen hundred and sixty-nine, and in January annually thereafter, there shall be appointed an assistant city clerk for the city of Boston. Said assistant shall be nominated by the city clerk to the board of aldermen, Assistant city clerk, how nominated and appointed. May 10, 1869.

¹ Ordinances in relation to officers and office hours, passed Sept. 9, 1850; and to establish the office of assistant city clerk, passed May 10, 1869.

May 10, 1869.

confirmed by said board, and sworn to the faithful discharge of his duties. He shall hold his office for the remainder of the municipal year in which he is appointed unless sooner removed; and he may be removed at any time by the city clerk. He shall be compensated for his services by the city clerk from the appropriation made by the city council for clerk-hire in his office.

Duties of assistant city clerk.
Ibid.

SECT. 3. It shall be the duty of said assistant city clerk to assist the city clerk in recording, indexing and certifying mortgages of personal property, mechanics' liens, assignments of wages, organizations of joint stock companies, and also, if necessary, to attest documents, as provided in the second section of chapter seventy-two of the acts of the year eighteen hundred and sixty-nine; and perform all other duties pertaining to the office of city clerk, when thereto requested by him, or when the office of city clerk shall be vacant from any cause.

CLAIMS.

ORDINANCE.¹

Appointment of a joint standing committee on claims.
Powers and duties.
Oct. 28, 1869.

SECTION 1. In the month of January, or as soon as may be thereafter, annually, there shall be appointed a joint committee of the city council, to be called the committee on claims, to consist of three members of the board of aldermen, and five members

¹ An ordinance providing for the appointment of a committee on claims, passed Oct. 26, 1869.

of the common council. Said committee shall have full power and authority to investigate all claims against the city, except for damages on account of the laying out and widening streets, the change of grade of streets, and the abatement of nuisances by the board of health; and may take such steps, in consultation with the city solicitor, as they deem expedient for the defence of the city in suits at law for the recovery of any alleged claim against the city. Said committee are also authorized, with the approval of the mayor, to settle and adjust any such claim which does not exceed, in amount, the sum of five hundred dollars.

Oct. 26, 1869.

CLERK OF COMMITTEES.

ORDINANCE.¹

SECTION 1. On the first Monday of February, annually, or within sixty days thereafter, there shall be elected, by concurrent vote of both branches of the city council, a clerk of all committees, standing or special, of either branch, or of both branches, of the city council, not otherwise provided for by any ordinance or order of the city council. Said clerk shall hold his office for one year from the first Monday in April, in the year in which he shall be elected, unless sooner removed; and he may be removed at the pleasure of the city council; and vacancies may be filled at any time for the unexpired term. For

Election of clerk
of standing or
special com-
mittees.
Oct. 26, 1869.

¹ An ordinance to establish the office of clerk of committees, Oct. 26, 1869.

Oct. 23, 1869.

his services he shall receive such compensation as the city council shall from time to time determine.

Said clerk to make a record of proceedings of committees. Ibid.

SECT. 2. Said clerk shall make a proper record in books kept for the purpose, and furnished by the city, of all the proceedings and transactions of the committees of which he is clerk; and shall keep a calendar of all the meetings of said committees, and notify the members thereof whenever requested so to do by the chairman for the time being. He shall also perform such other duties and services as the said committees, or either of them, shall from time to time require.

Said clerk may appoint an assistant, subject to approval of city council. Ibid.

SECT. 3. Said clerk may, upon the passage of this ordinance, and annually afterwards in the month of April, or whenever a vacancy occurs, appoint an assistant, subject to the approval of the city council. Said assistant shall perform such services, clerical or otherwise, as the said clerk, or any of the committees aforesaid, may direct. He may be removed at any time by the said clerk, or the city council. For his services he shall receive such compensation as the city council shall from time to time determine.

CONSTABLES.¹

STATUTES.

Mayor and aldermen to appoint constables.

1. The mayor, by and with the consent of the aldermen, is empowered to appoint annually, such a number of persons as con-

1802, c. 7, § 1.
1821, c. 110, § 13.
1854, c. 448, § 49.

¹ For appointment of constables to serve in municipal courts in Boston, see "Courts." For general provisions respecting the authority and duties of constables, see G. S. c. 18, §§ 31, 60-71. Sts. 1862, c. 216; 1864, c. 151; 1866, c. 235; 1870, c. 346; 1875, c. 15, § 9. See, also, "Taxes," p. 839.

stables as the public service may require ; and the said constables, so appointed, shall give bonds to the city treasurer, in such sums, and on such conditions, as the board of aldermen shall think proper, for the faithful performance of the duties of their office.

Bond.
See § 4.
5 Allen, 409.
Powers.
1807, c. 134, § 3.

By the act of 1802, constables in Boston have the same powers as were by law vested in constables chosen by the towns in this commonwealth. Such constables, in addition to the usual condition of their bonds, shall also be bound to the faithful execution of all warrants committed to them by the treasurer and collector.

2. When the condition of any bond, given to the treasurer of the city of Boston by any constable of said city for the faithful performance of the duties of his office, shall be broken to the injury of any person, such person may cause a suit to be instituted upon such bond, at his own costs, but in the name of the treasurer of the city of Boston ; and the like endorsements shall be made on the writ, and the like proceedings be had thereon to final judgment and execution, and the like writs of *scire facias* on such judgment, as may be made and had by a creditor on administration bonds given to any judge of probate : *provided, however*, that no such suit shall be instituted by any person for his own use, until such person shall have recovered judgment against the constable, his executors or administrators, in an action brought for the malfeasance or misfeasance of the constable, or for non-payment of any moneys collected by the said constable in that capacity, or a decree of a judge of probate allowing a claim for any of the causes aforesaid, and such judgment or decree, or so much thereof as shall be unsatisfied with the interest due thereon, shall be the proportion of the penalty for which execution shall be awarded : *provided, however*, that this act shall not be construed to make any surety in any bond given by the constable as aforesaid, before the passing of this act, liable to any suit, which could not heretofore be legally prosecuted against him.

Persons injured
by breach of
bond of constables may maintain actions in name of treasurer.
1814, c. 165, § 1.
7 Allen, 387.
104 Mass. 376.

Proviso.

Proviso.

3. It shall be the duty of the treasurer aforesaid to deliver an attested copy of any constable's bond to any persons applying and paying for the same, and such attested copy shall be received as evidence in any case : *provided, nevertheless*, that if in any suit

Copy of bond to be given to persons applying for the same.
Ibid. § 2.
See § 4.

1844, c. 165, § 2. the execution of the bond shall be disputed, the court may order the treasurer to bring the original bond into court.¹

Special author-
ity in the city of
Boston. Bond,
etc.
1860, c. 147.

4. Any constable in the city of Boston who shall have given to the treasurer of the city of Boston a bond, with sureties in a sum not less than three thousand dollars, to the satisfaction of the said treasurer, with condition for the faithful performance of his duties in the service of all civil processes which may be committed to him, and shall have caused the same, with the approval of the mayor and aldermen of said city indorsed thereon, to be filed in the office of the city clerk of said city, may, within the said city of Boston, serve any writ or other process in any personal action, and any process in replevin which constables are now by existing provisions of law authorized to serve; and in addition thereto may serve any writ or process in any personal action or process in replevin which may be made returnable to the police court in said city of Boston; and no constable in the city of Boston shall serve any civil process until he shall have given the bond as herein provided.¹

Any constable
of Boston may
serve process in
personal action
where damages
are laid not ex-
ceeding three
hundred dollars.
1869, c. 247.

5. Any constable of the city of Boston who shall have complied with the provisions of section one of chapter one hundred and forty-seven of the acts of the year eighteen hundred and sixty, may, within said city of Boston, serve any writ or other process in any personal action in which the damages are not laid at a greater sum than three hundred dollars, and any process in replevin in which the subject-matter does not exceed in value three hundred dollars.

How removable.
Vacancies.
G. S. c. 19, § 3.
1864, c. 174.

6. The mayor of a city may, with consent of the board of aldermen, remove from office a constable for gross misconduct; and vacancies in the office of constable may be filled by the mayor and aldermen at any time during the year.

¹ A person injured by the breach of the condition of a bond given by a constable to the treasurer of Boston under St. 1860, c. 147, may sue thereon in the name of the treasurer. 103 Mass. 280.

CONTRACTS WITH CITY OFFICERS.

STATUTES.

1. No officer or agent of the State, or of any city, town, or public institution, nor any person employed by either of them, authorized to procure materials, supplies, or other articles, either by purchase or contract, or to employ service or labor, shall be allowed either directly or indirectly for himself, or for any other person, to receive any commission, discount, bonus, present, or reward from the person or persons making such contract, furnishing any such materials, supplies, or other articles, or from any person rendering service or labor under such contract.

State, city, town, and other public officers and persons employed by them, etc., not to receive commissions, etc., on purchases and contracts.
1862, c. 101, § 1.

2. Any person offending against the provisions of the preceding section, or any person who shall give or offer any such commission, discount, bonus, present or reward, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten dollars, nor more than five hundred dollars, or by fine and imprisonment not exceeding one year, at the discretion of the court.

Penalty on officers, etc., for violating this act, and on persons for offering any bonus or commissions, etc.
Ibid. § 2.

3. The state auditor, or the auditor of any city, town, or public institution, or any person authorized to approve demands for the supply of any articles specified in the first section of this act, is hereby authorized, before approving any such demand, to require the claimant to certify under oath, that the whole of the articles for which claim is made has been furnished, or that the whole labor or service has been performed, and that no commission, discount, bonus, reward or present of any kind has been received, or is promised or expected on account of the same.

Auditing officers may require claimants to make oath to certain facts.
Ibid. § 3.

4. No officer connected with any prison, house of correction, lunatic hospital or other public charitable institution, shall be concerned or interested, directly or indirectly, in any contract, purchase or sale made on account of any of said institutions, or shall corruptly accept any bribe, present or gratuity from any person interested in such contracts.

Officers of prisons, etc., not to contract.
1872, c. 282, § 1.

5. No person interested, directly or indirectly, in any contract connected with any prison or public charitable institution, shall

Not to be interested in contracts.
Ibid. § 2.

1872, c. 282, § 2. corruptly give, offer or promise to any officer of such institutions any bribe, gift or gratuity.

Penalty.
Ibid. § 3.

6. Any person convicted of a violation of the provisions of the [two] preceding sections shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison for a term not exceeding two years.

Members of city
council not to
be interested in
city contracts.
1875, c. 232, § 1.

7. No person shall be interested in a private capacity, either directly or indirectly, in any contract or agreement wherein a city is a party interested, if he be a member of the city council of said city, or of either branch thereof, and if said contract or agreement be made by said city council or either branch thereof, or by authority derived therefrom.

Nor if he be a member of any municipal board in said city, and said contract or agreement be made by said board, or authority therefrom.

Nor if he alone, or with others, represent said city in making such contract or agreement. Nor shall he, directly or indirectly, for himself or any other person, receive any commission, discount, bonus, present or reward from the person or persons making or performing such contract or agreement.

Members of
legislature or
executive coun-
cil not to be
interested in
contracts, etc.,
wherein the
state is a party.
Ibid. § 2.

8. No person shall be interested in a private capacity, either directly or indirectly, in any contract or agreement wherein the state is a party interested, if he be a member of the legislature or executive council of this state, and said contract or agreement be made by said legislature or either branch thereof, or authority derived therefrom. Nor if he alone, or with others, represent said state in making such contract or agreement; nor shall he, directly or indirectly, for himself or any other person, receive any commission, discount, bonus, present or reward from the person or persons making or performing said contract or agreement. Nor if he be a member of any state commission, and said contract or agreement be made by said commission or authority derived therefrom.

Penalty.
Ibid. § 3.

9. Whoever violates the provisions of this act [St. 1875, c. 232, being §§ 7, 8 of this digest] shall be punished by a fine of not less than fifty dollars nor more than one thousand dollars, or by fine and imprisonment not exceeding one year, at the discretion of the court.

10. No sheriff, deputy sheriff, jailer, constable, city marshal, or other officer, who receives a salary from any county, city, or town, for his official services, shall be allowed or paid any fees, or extra compensation whatever, for any official services in any criminal case rendered or performed whilst such officer is entitled to a salary as aforesaid; but all fees of such officers for services in criminal cases shall be allowed and taxed as in behalf of other officers, and shall be paid to the city, town or county from which such officer receives his salary. The expenses of such officer, necessarily and reasonably incurred, and actually disbursed, in the service of any precept, shall be allowed and paid to him.

No officer who receives a salary from any county, city, etc., shall receive fees, but only their expenses. 1862, c. 216, § 15. Fees to be paid city, etc.

ORDINANCE.¹

SECTION 1. No member of the city council, no member of any board, and no individual chosen by the city council, or by either branch thereof, shall be interested in a private capacity, directly or indirectly, in any contract or agreement for labor, or for any materials, goods, wares, or merchandise furnished to the city, wherein the city is a party interested, unless the same be expressly authorized to be made and entered into with such member, by some ordinance or order of the city council.

Members of city council and others not to be interested in any contract with the city. Dec. 23, 1850.

SECT. 2. All contracts, agreements, purchases, and sales, made contrary to the preceding section, shall be utterly void at the pleasure of the city council; and no bill against the city, arising out of, or connected with, any such contract, agreement, purchase, or sale shall be approved by any committee, passed by the auditor, or paid by the treasurer, unless approved and allowed by express vote of the city council.

All contracts made contrary to the provisions of first section to be void, unless, etc. Ibid.

¹ An ordinance in relation to contracts with city officers, passed December 23, 1850.

CONTRACTS AND EXPENDITURES.

ORDINANCE.¹

When appropriation is deficient, committees, etc., to report, etc.
March 19, 1859.

Committee, etc., not to make any contract till authorized.

Whenever any committee or board is authorized to make any contract, by the city council, or either branch thereof, or to expend any moneys appropriated by the city council, or either branch thereof, for any purpose, and the estimates for such contract shall exceed in the amount the appropriation specifically made for the object thereof; or the sum specifically appropriated for any purpose shall have been expended by them, and for either reason a further appropriation is necessary for the accomplishment of the undertaking, such committee or board shall report to the city council, or the branch thereof from which their authority is derived, the fact of such deficiency of the appropriation, with a detailed statement of the cause or causes thereof, and an estimate of the amount necessary to be added to such appropriation, and the committee or board shall not conclude such contract, nor make further expenditure in the premises, until they shall be authorized so to do by the city council, or the branch thereof from which their authority is derived.

COUNTY AND COUNTY OFFICERS.

STATUTES.

Boundaries, powers, etc., of counties.
G. S. c. 17, § 1.

1. The boundaries, rights, duties, powers, privileges, and immunities, of the several counties shall remain as now established.²

¹ An ordinance in relation to contracts and expenditures, passed March 19, 1859.

² The county of Suffolk now includes within its territorial limits the cities of Boston and Chelsea, and the towns of Revere and Winthrop. At the May

Each county shall continue a body politic and corporate for the following purposes: to sue and be sued, to purchase and hold for the use of the county personal estate and lands lying within its own limits, and to make necessary contracts and do necessary acts in relation to the property and concerns of the county.¹ G. S. c. 17, § 1.

2. Real and personal estate heretofore conveyed by any form of conveyance to the inhabitants of a county, to the county treasurer, or to a committee, or other persons, for the use and benefit of a county, shall be deemed to be the property of such county; and such conveyances shall have the same force and effect as if made to such counties by their respective corporate names. Former conveyances to counties confirmed. Ibid. § 2.

3. In the county of Suffolk, the real and personal estates which on or before the twenty-third day of June, in the year one thousand eight hundred and thirty-one, belonged, or was deemed and taken to belong, to said county, shall belong to and be vested in the city of Boston; and the city of Chelsea, and towns of Revere and Winthrop, shall have no right, title, or interest, therein. In Suffolk, county property belongs to Boston. Ibid. § 3.

4. The county commissioners, or other public officers having the charge and management of the county lands, may, by their order of record, appoint agents to sell any real estate of their county; and deeds made on behalf of the inhabitants of the county by such agents, under their proper hands and seals, and duly acknowledged by them, shall be sufficient to convey the right, title, interest, and estate which the county then has to the lands so conveyed. How county lands may be sold and conveyed. Ibid. § 4.

session of the general court, in 1738, "all the lands within the town of Boston heretofore called Winnisimmet, Rumney Marsh, and Pullen Point," were "erected into a township by the name of Chelsea." The town was divided in 1846, and a portion of its territory was made a separate town by the name of North Chelsea. In 1852, a portion of North Chelsea was incorporated as the town of Winthrop. Chelsea was made a city in 1857. In 1856 an act was passed to unite Chelsea to Boston; but the question being submitted to the voters of the two cities, Boston voted against annexation. In 1874 another act was passed (c. 313) and submitted to the popular vote with the same result. In the same year an act was passed (c. 322) authorizing the annexation of Winthrop to Boston, but its acceptance was refused by Boston. The name of the town of North Chelsea was changed to "Revere," in 1871 (c. 126).

¹ See Colony Ordinances of 1643 and 1662; Mass. Col. Rec. vol. II., p. 38; vol. IV., p. 52, and Plymouth Colony Law of 1685; Plym. Col. Laws, pp. 294, 295, ed. of 1836.

County buildings to be provided by Boston.
G. S. c. 17, § 6.
1872, c. 91.
1872, c. 87.

5. In the county of Suffolk, the court-houses,¹ jails, houses of correction, fire-proof offices, and other necessary public buildings, for the use of the county, shall be provided by the city of Boston, and said city shall pay all county charges. No part of the expenses incurred by the laying out, widening, alteration, discontinuance, building or repair of any highway, bridge or other way of travel in the city of Chelsea or the towns of Revere and Winthrop, shall be assessed upon the county of Suffolk or the city of Boston.

Chelsea not to be assessed for county purposes.
G. S. c. 11, § 30.
County maps.
G. S. c. 17, § 7.

6. In the assessment of county taxes for the county of Suffolk, the city of Chelsea, and the towns of Revere and Winthrop, are not to be taxed for county purposes.

7. Changes in the boundaries of cities and towns, the courses of roads, railroads, and canals, and other topographical alterations in each county, shall be correctly and fairly delineated on the county maps in the possession of the county commissioners, who shall retain said maps, and from time to time cause such delineation to be made thereon.²

Same subject.
Ibid. § 8.

8. The secretary of the commonwealth shall, as often as necessary, transmit the manuscript county maps in his office to the respective county commissioners, who shall cause to be transferred thereto, by a competent engineer or surveyor under their direction, all alterations and corrections mentioned in the preceding section, and shall, within two months after receiving the same, return such maps to the office of the secretary, who shall immediately cause the alterations to be delineated on the plates of the state map.

Concurrent jurisdiction with Middlesex county on Charles river.
Ibid. § 9.

9. The jurisdiction of the counties of Suffolk and Middlesex shall be in common in and upon the water of Charles river; that is to say, all that space which lies within the banks of the river so far as the same runs between said counties. All offences committed within the banks of the river, as above described, may be heard, tried, and punished in that county in which legal process against the offender is first issued, in like manner as if such offence had been committed in such county; and civil process from either

¹ By chapter 306 of the acts of 1867 the board of aldermen of Boston were authorized to take and hold, by purchase or otherwise, so much land as they may deem necessary for the purpose of erecting thereon a court-house. See "Buildings," p. 89.

² See "Surveyors," *post*, for provisions in relation to true meridian lines for county of Suffolk.

county may run into and be executed within the common jurisdiction. G. S. c. 17, § 9.

10. The courts in the county of Suffolk, concurrently with the courts of the several other counties in which parts of the territory hereinafter described are situated, shall have jurisdiction of all crimes, offences, and misdemeanors committed on the islands or waters in Boston harbor which lie westerly of a line drawn from Point Alderton to the easternmost point of the Outer Brewster island, and from thence to Short beach, at the line dividing the towns of Revere and Winthrop, as if said islands and waters were within the limits of the county of Suffolk; and also of all crimes, offences, and misdemeanors committed in those portions of the town of Hull not embraced within the previous provisions of this section. By an act passed February 11, 1876, it is provided that the concurrent criminal jurisdiction of the courts in the county of Suffolk, so far as it relates to the islands or waters of Boston harbor, shall not extend to the southward of a line drawn westwardly from the most easterly point of Point Alderton, through the most northerly point of Moon island to the channel of Neponset river, excepting those portions of the town of Hull embraced within the provisions of chapter one hundred and seventy-seven of the acts of the year one thousand eight hundred and sixty-three.

Jurisdiction with other counties over islands in Boston harbor. Ibid. § 10.

1863, c. 177.

1876, c. 8.

11. In the county of Suffolk, the aldermen of the city of Boston shall have like powers and perform like duties within said city as are exercised and performed by the county commissioners of other counties, except such as relate to trials by jury, and the recovery of damages on such trials, in laying out, altering, or discontinuing, highways or townways.¹

In Suffolk, aldermen have powers of county commissioners. G. S. c. 17, § 33.

12. The voters of Revere and Winthrop vote with Middlesex county in the election of county commissioners; and the county commissioners for the county of Middlesex shall have jurisdiction within the towns of Revere and Winthrop, and shall exercise and perform therein all the powers and duties relating to highways, and to all other matters which, in their own county, are committed to

In Chelsea, Revere, and Winthrop, commissioners of Middlesex to act. G. S. c. 10, §§ 6 and 14. G. S. c. 17, § 34. See 1872, c. 87. See 1872, c. 9L.

¹ See St. 1870, c. 337, in relation to the board of street commissioners. "Streets," *post*, p. 735.

G. S. c. 17, § 34. their control and direction, except as is otherwise provided by law ; and when performing duties which relate to said places, they shall be paid therefor by said places, or either of them, in such proportions as the commissioners may direct, at the rate of three dollars a day, and five cents a mile travel, for each commissioner attending in the case.

To whom powers and duties of commissioners, etc., appertain. Ibid. § 35. 13. All the provisions of law concerning the powers, duties, and liabilities of county commissioners and their clerks shall, except where otherwise specially provided, be construed to include and apply to all other public officers who by law exercise the powers of such commissioners or clerks in the respective counties.

COUNTY OFFICERS.

Judge of probate. Constitution. G. S. c. 119, §§ 1, 16. 1876, c. 5. 1. The judge of probate and insolvency is appointed by the governor with the advice and consent of the council, and holds office during good behavior. Salary, \$4,000 ; paid by the commonwealth.

District attorney. G. S. c. 10, § 2. G. S. c. 112, § 4. 1 Allen, 353. Ibid. c. 14, § 30. Ibid. c. 10, §§ 10, 12. 1870, c. 361. 2. The district attorney, elected in November, 1874, and every third year thereafter by the voters of Suffolk district (which is the same as Suffolk county), holds office for three years from the first Wednesday in January following said election. For sufficient cause he may be removed by the supreme judicial court. In case of a vacancy, the governor may appoint a person to fill such vacancy, who shall hold the office until the next annual election, or until another is chosen in his stead. In case of no election or a vacancy, the governor shall order a new election. Salary, \$5,000, paid by the commonwealth.

Assistant district attorney. G. S. c. 14, § 32. 1867, c. 349, § 1. 1870, c. 361. 1873, c. 89. 1874, c. 164. 3. The assistant district attorney for Suffolk district is appointed by the district attorney, and removable at his pleasure. Salary, \$3,000 ; paid by the commonwealth. By St. 1874, c. 164, the district attorney for the Suffolk district is authorized to appoint a second assistant, who shall be removable at his pleasure. Salary, \$2,000 per annum.

Sheriff. G. S. c. 10, §§ 1, 5. Ibid. c. 17, §§ 51-64. 4. The sheriff, elected in November, 1874, and every third year thereafter, holds office for three years from the first Wednesday in January following his election. He may be removed by the governor for cause, and the vacancy for this or any other cause may be filled by appointment by the governor ; the person

so appointed shall hold office until a successor is elected and qualified. In case of a failure to elect, or other vacancy, the governor shall order a new election to fill such vacancy. Salary, \$2,500; paid by the county.

5. The clerks of the courts, to wit: one clerk of the supreme judicial court, and two clerks of the superior court (one for the civil and one for the criminal business), elected November, 1876, and every fifth year thereafter, by the voters of Suffolk county, hold their office for five years from the first Wednesday in January following their election. They may for cause be removed from office by the supreme judicial court. If a vacancy in the office of clerk of the supreme judicial court in Suffolk occurs, the justices of that court may appoint a clerk to hold office until the next annual election, or until another is elected or appointed; and if there is a vacancy in the superior court, the justices of that court may in like manner appoint a clerk for a similar term. In case of a failure to elect, or a vacancy, the governor shall order an election to fill such vacancy. For salaries they shall receive the following sums out of the fees received by them respectively, to wit: the clerk of the supreme judicial court \$3,000, the clerk of the superior court for civil business, \$3,500, and the clerk of the superior court for criminal business, \$3,000; and each clerk shall in addition retain one-half of the excess of the fees received by him over such salary, and the other half of such excess he shall pay to the county. The justices of the supreme judicial court, and the justices of the superior court, may appoint assistant clerks in the same county for their several courts, to hold office for three years, subject to removal by the courts. The salary of the assistant clerk of the supreme judicial court is \$2,500, and that of the superior court for civil business, \$2,500; paid by the county. The clerk of the superior court for civil business in Suffolk county may appoint a second assistant clerk *pro tempore*, or for a definite term; and the clerk of the superior court for criminal business may appoint an assistant clerk *pro tempore*, or for a definite term. Each clerk of the court shall pay his assistant or second assistant so appointed for his services, and shall be responsible for his official acts.¹

¹ For the appointment of clerks of municipal courts for civil and criminal business, see "Courts," § 11, p. 221.

G. S. c. 10, §§ 10, 13.

Ibid. c. 17, § 70.

Clerks of courts.

Ibid. c. 10, §§ 1, 3.

Ibid. c. 112, § 4.

1 Allen, 358.

Ibid. c. 121, § 7.

Ibid. c. 10, §§ 10, 13.

Ibid. c. 121, §§

23, 24.

1867, c. 295, §§ 1, 2, 3.

G. S. c. 121,

§§ 23, 24.

Ibid. § 8.

Ibid. § 26.

1867, c. 295, § 6.

1871, c. 203.

1873, c. 181.

Register of probate, etc.

G. S. c. 10,

§§ 1, 4.

Ibid. c. 112, § 4.

1 Allen, 358.

117 Mass. 603.

Ibid. c. 119, § 13.

Ibid. § 16.

1867, c. 357.

G. S. c. 10, § 10.

Ibid. c. 119,

§§ 11, 16.

6. The register of probate and insolvency elected in November, 1873, by the voters in Suffolk county, and every fifth year thereafter, holds his office for five years from the first Wednesday in January following his election. He may be removed for sufficient cause by the supreme judicial court. If a vacancy occurs, the governor may appoint some person to fill the office until another is elected. Salary \$3,000; paid by the commonwealth. The judge of probate, and insolvency, may appoint an assistant register to hold office for three years, unless sooner removed by the judge. Salary, \$1,500; paid by the commonwealth.

Commissioners of insolvency.

Ibid. c. 10, §§ 1,

5.

Ibid. c. 112, § 4.

1 Allen, 358.

Ibid. c. 17, § 81.

7. The commissioners of insolvency, three in number, elected in November, 1874, by the voters of Suffolk county, and every third year thereafter, hold office for three years from the first Wednesday in January following their election. For good cause they may be removed by the supreme judicial court. In case of a failure to elect, or if a vacancy occurs, the governor may fill the vacancy by the appointment of a person to hold office until a new election. They are paid by fees.

Register of deeds.

Ibid. c. 10, §§ 1,

9.

Ibid. c. 17, § 86.

Ibid. § 88.

Ibid. § 87.

8. The register of deeds for Suffolk county elected in November, 1876, and to be elected every third year thereafter, holds office for three years. He is to be sworn before one or more of the aldermen of Boston, and under their direction shall give bond for the faithful discharge of his duties. When found guilty by the grand jury of misconduct in his official duties, or when, by infirmity, he is incapable of discharging them, he shall be removed by the superior court. In case of removal, resignation, or death, the superior court shall appoint some person to fill the vacancy until a new election. In case of death or disability, the person then acting as clerk in the office shall receive and enter all deeds, instruments, and papers in the proper books of the office until the vacancy is filled, or the disability removed. He is paid by fees. The register may, subject to the approval of the superior court in Suffolk county, appoint an assistant register of deeds, for whose doings the said register shall be responsible. Said assistant shall be paid for his services by the register, and be removable at his pleasure.

1863, c. 200, § 2.

G. S. c. 10, § 15.

Register of deeds for Suffolk may ap-

point an as-

sistant.

1872, c. 34.

County treasurer.

Ibid. c. 17, §§ 44,

36.

9. The treasurer of the city of Boston is *ex officio* treasurer of the county of Suffolk. He shall be sworn by one or more of the aldermen of Boston, and shall give bond in such sum as the aldermen shall direct.

10. The aldermen of the city of Boston have the powers and duties of county commissioners, with certain exceptions.¹

11. The master of the house of correction in Suffolk is appointed by the directors for public institutions of the city of Boston. His compensation is established by the city council and board of directors, and is paid by the city.

12. Coroners and special coroners are appointed by the governor for seven years. If a coroner neglects or refuses to give bond, or the condition of his bond is broken, he is liable to be removed, and is subject to like penalties as are sheriffs. In Boston, the city auditor shall audit coroners' accounts.

13. In the county of Suffolk, the board of aldermen of the city of Boston shall be a board of accounts, who shall meet quarterly, and as much oftener as may be necessary, to allow bills of costs, accounts, and charges arising in municipal court of the city of Boston, and in the maintenance and keeping of the prisoners in the jail of the county of Suffolk, and of other expenses and charges in keeping said jail and other places of confinement and punishment in said city. They shall certify such accounts, charges, and expenses as are allowed by them, by an indorsement thereon, addressed to the public officer by whom the same are payable.

COUNTY RECEIPTS AND EXPENDITURES.

RECEIPTS.

Fines, fees, forfeitures, penalties, forfeited recognizances, and costs recovered in prosecutions, in which any part of the costs are paid by the county, are to be paid to the county treasurer, where no other provision is especially made by law, whether received by the justices or clerks of the courts, or the sheriff, jailer, master of the house of correction, or master of the house of industry, or any other person lawfully entitled to collect and receive the same; excepting that the clerks of the supreme judicial

County commissioners.

G. S. c. 17, § 23.

Ibid. c. 43, § 77.

Master house of correction.

1863, c. 241.

G. S. c. 173, § 56.

Coroners.

Constitution,

c. 2, § 1, art. 9.

1861, c. 113, § 1.

G. S. c. 17, § 77.

Ibid. c. 175, § 15.

Aldermen of

Boston to be

board of ac-

counts in Suf-

folk county.

1866, c. 117, § 1.

County receipts,
etc.

G. S. c. 116,

§§ 23, 30, 43;

c. 121, §§ 21, 23;

c. 176, §§ 1, 9-13.

1860, c. 191, § 10.

G. S. c. 17, § 71.

G. S. c. 170, § 47.

¹ See Statute 1870, c. 337, in relation to the board of street commissioners. "Streets," *post*, p. 735.

- G. S. c. 170, § 47. and superior courts may retain out of the fees received by them the amount of their several salaries, and one-half of the excess of said fees, not including fees for copies of papers which they are not required by law to furnish.
- G. S. c. 178, § 1. Rent of jail for confinement of prisoners committed by United States courts.
- G. S. c. 50, § 22. Fees paid by hawkers and peddlers for county licenses.

EXPENDITURES.

- Expenditures. The expenditures, enumerated below, strictly belong to the county and are treated here as such, although by special provisions of law in Suffolk the city of Boston pays all county charges.
- Ibid. c. 121, § 23, 27. The salaries of the assistant clerks of the supreme judicial court and of the superior court.
- 1867, c. 293, § 5.
- 1870, c. 312. The salaries of two stenographic reporters for the superior court held for civil business.
- 1868, c. 159.
- 1874, c. 271. The salaries of two assistant clerks of the municipal court of the city of Boston for the transaction of civil business.
- G. S. c. 17, § 70; c. 178, § 21. The salary of the sheriff, and such compensation in addition as the mayor and aldermen may order for the keeping of prisoners.
- 1860, c. 92.
- G. S. c. 17, § 6. The salaries of the keepers of the court-house, police court rooms, probate offices, and of the office of the register of deeds.
- Ibid. c. 178, § 40. The salary of the chaplain at the jail.
- Ibid. c. 176, §§ 4, 14, 17. The pay of jurors and witnesses, deputy sheriffs, constables, and messengers, when on duty in the supreme judicial, superior, and municipal courts in Suffolk county, including the police court in Chelsea; and all incidental expenses in said courts.
- 1860, c. 191, § 10.
- G. S. c. 116, §§ 21, 43; c. 115, § 17.
- 1861, c. 172. The expenses of holding coroners' inquests on dead bodies, including the fees of the coroner, when the person found dead is not a stranger.
- G. S. c. 175, §§ 12-15; c. 157, § 6.
- See St. 1871, c. 241.
- G. S. c. 75, § 11; c. 76, § 25. The fees of commissioners and judges, and officers for commitment of girls to State Industrial School at Lancaster, and of boys to the Reform School at Westborough, or the nautical branch of said school.
- G. S. c. 173, § 6; c. 176, § 17. The payment of fines, forfeitures, penalties, and rewards for the breach of any law of the commonwealth received by the county, which by law enure to complainants or other parties.
- 1860, c. 191, §§ 7, 8.

The expense of building, repairing, and furnishing court-houses, jails, houses of correction, fire-proof offices, and other necessary public buildings for the use of the county.

G. S. c. 17, §§ 5, 6; c. 29, §§ 3, 13; c. 178, § 6; c. 118, § 13.
1876, c. 234.

Fuel, lights, blanks, blank books, printing, stationery, and incidental expenses for all the courts (excepting courts of insolvency), register of deeds, register of probate, and including the police court in Chelsea.

G. S. c. 116, § 21; c. 115, § 17; c. 117, § 31; c. 17, § 23; c. 29, §§ 1, 2.
1861, c. 172.

To the county law library association, certain sums received from the clerks of courts.

1874, c. 156.

Making indexes of deeds and plans, and copying old ones in the office of register of deeds, binding and filing papers and documents, and arranging the same, copying old records in any of the county offices, completing the recording of deeds, etc., that may have been left unfinished; and procuring copies of records or papers in the possession of any other county, city, or town, in which the county of Suffolk is interested; the preparing of county maps, and the expense of recording probate proceedings, to an amount not exceeding \$1,200 per annum.

G. S. c. 17, §§ 103, 104; c. 29, §§ 1, 2, 7, 13.
1874, c. 361.

Repairing and replacing the weights, measures, and balances, which are furnished by the state, and the safe-keeping of the same.

G. S. c. 51, §§ 5, 6, 7.

The expenses of supporting all persons committed to the jails or houses of correction, including pay of officers, instruction in reading and writing, books, pay of chaplain, and physician, the conveyance of prisoners to and from the station-houses, lockups, jails, houses of correction, and court-houses, the burial of prisoners who have no settlement in the state, and all incidentals; excepting for persons committed to jail on mesne process or execution, so long as the fees for their board are paid by the defendant or debtor, plaintiff or creditor.

Ibid. c. 178, §§ 50-61; c. 178, §§ 23, 41.
1866, c. 117.

COURTS.

STATUTES.

SUPERIOR COURTS.

1. By the act of April 5, 1859, the superior court of the county of Suffolk, and the municipal court were abolished, and in their place was substituted the superior court. The former were county

Superior court.
1859, c. 196.
G. S. cc. 114 and 115.

1859, c. 106.

courts, with judges and clerks paid by the county of Suffolk; the latter is a court with jurisdiction throughout the commonwealth, holding in the county of Suffolk four terms a year for civil business, on the first Tuesdays of January, April, July, and October, and twelve terms each year for the transaction of criminal business, a term commencing on the first Monday of each month. The judges, clerks, and all the salaried officers of the court are paid by the commonwealth. The general provisions of law, applicable to the superior court, can be found in the general statutes, chapters 114, 115. They are not given here, as they contain nothing peculiar to the county of Suffolk.

MUNICIPAL COURTS.

Municipal court
established.

1866, c. 279, §§ 1,
2.

1874, c. 271.

1875, c. 106.

1876, c. 184.

Jurisdiction.

1876, c. 240.

See 1875, c. 106,

116 Mass. 349.

Salary of jus-
tices.

1863, c. 279, § 4.

Ibid. § 8.

Salary of clerks.

1867, c. 356.

1872, c. 43.

Asst. clerks.

2. By the act of May 29, 1866, the municipal court of the city of Boston was established, to have the same powers and jurisdiction that the police court formerly had; and it was provided that, when the act took effect, all cases, civil or criminal, then pending in the police court, should be transferred to the municipal court. By an act passed April 28, 1876, it was provided that the criminal and civil jurisdiction of the municipal court of the city of Boston shall embrace the district and territory included in wards six, seven, eight, nine, ten, eleven, twelve, sixteen, seventeen and eighteen. The salaries of the chief justice and each of the associate justices are fixed at three thousand dollars per annum, to be paid from the treasury of the commonwealth. The justices are required to meet quarter yearly, and as much oftener as may be necessary, to allow bills of costs, accounts, charges and expenses arising in said court, and certify to the public officer by whom the same are payable, such as are allowed by them. By St. 1867, c. 356, it is provided that the clerk for the criminal business shall receive an annual salary of twenty-five hundred dollars; and the clerk for the civil business shall receive an annual salary of two thousand dollars. By St. 1872, c. 43, the clerk for the criminal court was authorized, subject to the approval of the justices of said court, or a majority of them, to appoint four assistant clerks, who shall be removable at his pleasure, and for whose doings he shall be responsible, two of whom shall be styled first assistant clerks, and two second assistant clerks. The first assistant clerks shall receive an

annual salary of two thousand dollars each, and the second assistant 1872, c. 43.
clerks shall receive an annual salary of eighteen hundred dollars each. By St. 1874, c. 271, the clerk of the court for the transaction of civil business was authorized, subject to the approval of the justices of said court, or a majority of them, to appoint two assistant clerks, who shall be removable at his pleasure, and for whose doings he shall be responsible. The salary of the first assistant clerk shall be at the rate of one thousand eight hundred dollars, and the salary of the second assistant clerk shall be at the rate of one thousand two hundred dollars, by the year.

3. The municipal court shall be held for criminal business by one or more of the justices daily, except on Sundays or legal holidays, in the forenoon, at nine o'clock, and in the afternoon, if it appears expedient to any of the justices. The court shall be held for civil business by one or more of the justices, weekly. Each term shall commence on Saturday, and actions therein may be continued to any future day fixed for the sitting of the court; different justices may hold different sessions at the same time for the trial of civil or criminal cases.

4. The act to unite the cities of Boston and Roxbury (chap. 359, 1867) provided, among other things, that the territory then comprised within the limits of the city of Roxbury should, after the annexation to Boston, contain a judicial district under the jurisdiction of the police court of Roxbury, which should continue to exist and should thereafter be designated and known by the name of "the municipal court for the southern district of the city of Boston." By St. 1871, c. 376, the salary of the justice of said court was fixed at twenty-five hundred dollars per annum; and the salary of the clerk at fifteen hundred dollars per annum. By St. 1872, c. 44, the clerk was authorized to appoint an assistant, with an annual salary of eight hundred dollars. By St. 1876, c. 240, it is provided that the municipal court of the Highland district shall be hereafter called and known as the municipal court of the Roxbury district; and that the criminal and civil jurisdiction of said court shall embrace the district and territory included in wards nineteen, twenty and twenty-one of said city, and so much of ward twenty-two of said city as lies east of the eastern boundary between said ward and the town of Brookline, and of a line drawn through the centre of St. Mary's street extended.

Terms of court,
when to be held.
1833, c. 279, § 11.
1869, c. 17.
G. S. c. 116, § 38.

Municipal court
for Roxbury dis-
trict.
1867, c. 359, § 4.

Salaries.
1871, c. 376.
1872, c. 44.

Jurisdiction.
1876, c. 240.

Dorchester
court.
1870, c. 333.
Salaries.
1874, c. 338.

5. By St. 1870, c. 333, a police court was established in Dorchester, under the name of the municipal court of the Dorchester district, to consist of one standing and two special justices. By St. 1874, c. 338, the salary of the standing justice was fixed at sixteen hundred dollars per annum; and the salary of the clerk at one thousand dollars. By St. 1876, c. 240, it is provided that the criminal and civil jurisdiction of the municipal court of the Dorchester district shall embrace the district and territory included in ward twenty-four of said city.

Jurisdiction.
1876, c. 240.

Charlestown
court.
1873, c. 286.

6. By St. 1873, c. 286 (to unite the city of Charlestown to the city of Boston), it is provided that the city of Charlestown shall constitute a judicial district, under the jurisdiction of the police court of the city of Charlestown, which shall continue to exist, and shall hereafter be designated and known by the name of the municipal court for the Charlestown district of the city of Boston. By St. 1874, c. 271, it is provided that the annual salary of the standing justice of the said municipal court of the Charlestown district shall be two thousand dollars, and the annual salary of the clerk of said court shall be one thousand five hundred dollars. By St. 1876, c. 240, § 3, it is provided that the criminal and civil jurisdiction of the municipal court of the Charlestown district shall embrace the district and territory included in wards three, four and five of said city.

Salaries.
1874, c. 271.

Jurisdiction.
1876, c. 240.

West Roxbury
court.
1874, c. 271, § 14.

7. By St. 1874, c. 271, § 14, a court was established in the West Roxbury district. The salary of the standing justice of said court was fixed at sixteen hundred dollars per annum; and the salary of the clerk at one thousand dollars. By St. 1876, c. 240, the criminal and civil jurisdiction embrace the territory included in ward twenty-three.

Jurisdiction.
1876, c. 240.

Brighton court.
1874, c. 271, § 14.

8. By St. 1874, c. 271, § 14, a court was established in the Brighton district. The salary of the standing justice was fixed at sixteen hundred dollars per annum; and the salary of the clerk at one thousand dollars. By St. 1876, c. 240, the criminal and civil jurisdiction embrace the territory in ward twenty-five.

Jurisdiction.
1876, c. 240.

South Boston
court.
1874, c. 271, § 14.

9. By St. 1874, c. 271, § 14, a court was established in South Boston. The salary of the standing justice was fixed at two thousand dollars per annum; and (by St. 1875, c. 182) the salary of the clerk was fixed at fifteen hundred dollars. By St. 1876, c. 240,

the criminal and civil jurisdiction embrace the territory included in wards thirteen, fourteen and fifteen. Jurisdiction. 1876, c. 240.

10. By St. 1874, c. 271, § 14, a court was established in East Boston. The salary of the standing justice was fixed at sixteen hundred dollars per annum; and the salary of the clerk at one thousand dollars. By St. 1876, c. 240, the criminal and civil jurisdiction embrace the district and territory included in the town of Winthrop, and in wards one and two of Boston. East Boston court. 1874, c. 271, § 14. Jurisdiction. 1876, c. 240.

11. By St. 1876, c. 240, it is provided that the clerks of the municipal courts in Boston shall hold their several offices according to the terms of their respective commissions unless sooner removed according to law.¹ Whenever a vacancy occurs in either of said offices, by death, resignation, expiration of commission, removal as aforesaid, or otherwise, the vacancy shall be filled by appointment by the governor, by and with the advice and consent of the council, for the term of five years, subject to removal as aforesaid.² Clerks of the courts. Ibid. § 10. Vacancies.

12. Every clerk of a municipal, district or police court, who has not already given bond as such, every standing justice of such court of which there is no clerk, and every trial justice, within sixty days from the passage of this act, and every such officer hereafter elected or appointed, before entering upon the duties of his office, shall give bond, with sufficient sureties, to be approved by the superior court or some justice thereof, in the sum of one thousand dollars, to the treasurer of the county, to account for and pay over all fines, costs, forfeitures, fees and moneys which he shall receive in the exercise of his office. A failure to so account or pay over shall be a breach of his bond. A failure to give such bond shall be a sufficient cause for his removal from office. Clerks of district, etc., courts, justice of such courts of which there is no clerk, to give bond. 1874, c. 394, § 3.

13. The county treasurers shall annually, in the month of November, notify all officers mentioned in the foregoing section in their respective counties, to make the returns required of them by law, and in such notice they shall specify the statutes under which returns are required to be made. County treasurers to notify certain officers to make the returns required by law. Ibid. § 4.

¹ A majority of the justices of the S. J. C. may remove the clerks when in their judgment the public good requires such removal. G. S. c. 112, § 4. 1876, c. 209.

² Under the provisions of § 19, c. 271, acts of 1874, the governor appointed for a term of five years the clerks of the several courts in Boston established under that act, namely: West Roxbury, Brighton, South Boston and East Boston.

To return to auditor, annually, statement of fees, etc., received by them in criminal cases.
1874, c. 304, § 5.

Designation of constables for attending municipal court.
1873, c. 310.
1874, c. 169.

May be designated to attend other police courts and trial justices in certain cases, and how paid.
1862, c. 216, § 14.

Fees of officers having salaries from cities, etc.

14. Every county treasurer shall annually, in the month of January, return under his oath to the auditor of the commonwealth a correct statement of all fines, forfeitures, costs, fees and moneys received by him in criminal matters during the year next preceding the first day of that month, and from whom received, and also the name of each magistrate, or officer, who has failed to account for and pay over to him as required by law, and what proceedings have been had upon his bond or otherwise.

15. By an act passed May 23, 1873, it is provided that the justices of the municipal court of the city of Boston shall designate constables of said city, not more than six, to attend the sessions of said court for the transaction of criminal business, and to serve such warrants, precepts, orders and processes issuing therefrom as shall be committed to them by said justices or either of them; and said constables shall each receive from the treasury of said city a salary at the rate of eighteen hundred dollars a year, to be paid in monthly instalments. By an act passed April 15, 1874, the justices of the same court are authorized to designate two constables to attend the sessions for the transaction of civil business, said officers to receive an annual salary of twelve hundred dollars.

16. Whenever the justice of a police court held in any town or city, or a justice of the peace, designated as a trial justice, shall be of opinion that the cost of criminal proceedings, before said court or justice, may be reduced by the designation of one or more officers to attend the sittings of said court or justice, and to serve such processes, precepts and orders as may be committed to them, the said court or justice may request the mayor and aldermen or the selectmen to appoint one or more constables or police officers for the purposes aforesaid; and the selectmen of the town or the mayor and aldermen of the city in which said court sits, or said justice resides, may determine the salaries of such officers so designated, which salaries shall be paid by the treasurer of said town or city; and it shall be the duty of said officers so designated to attend the civil as well as criminal sessions of such police courts, for which their salaries, as aforesaid, shall be full compensation.

17. No sheriff, deputy sheriff, jailer, constable, city marshal, or other officer, who receives a salary from any county, city, or

town, for his official services, shall be allowed or paid any fees, or extra compensation whatever, for any official services in any criminal case rendered or performed whilst such officer is entitled to a salary as aforesaid; but all fees of such officers, for services in criminal cases, shall be allowed and taxed as in behalf of other officers, and shall be paid to the city, town, or county from which such officer receives his salary. The expenses of such officer, necessarily and reasonably incurred, and actually disbursed, in the service of any precept, shall be allowed and paid to him.

to be paid to such cities, but not their expenses.
1862, c. 216, § 15.

COURT FOR JUVENILE OFFENDERS AND FOR COMMITMENT OF INSANE PERSONS.

18. By an act passed May 7, 1872, the governor was authorized to appoint and commission such number of justices of the peace as the public interest may require, to try juvenile offenders. By an act passed May 22, 1874, it is provided that the trial justices of juvenile offenders of Suffolk county shall have exclusive jurisdiction of all offences committed in said county against the laws of the commonwealth, by minors under seventeen years of age, and may impose such punishment as the said laws now or hereafter in force, may provide for such offences, except when the laws provide that an offence may be punished by death or imprisonment for life. The defendant in all cases shall have the right of appeal in manner now provided by law in criminal cases.

Trial of juvenile offenders.
1872, c. 358.

Jurisdiction of justices in Suffolk.
1874, c. 258, § 1.

19. When application is made to a trial justice of juvenile offenders in Suffolk county for the commitment of any insane person, if an officer representing the commonwealth, the county of Suffolk or the city of Boston, or any person in behalf of such insane person shall so request in writing, any two of said justices shall, together, hear and determine such application, under the provisions of law now governing the hearing of such matters before judges of probate courts.

Commitment of an insane person.
Ibid. § 2.

20. The city of Boston shall provide some convenient place for the trial of juvenile offenders and for hearing applications for the commitment of insane persons which shall be separate and apart from the ordinary and usual criminal trials and business of the courts of Suffolk county.

Boston to provide convenient place for trials.
Ibid. § 3.

One justice to
be in attendance
daily in Boston.
1874, c. 258, § 4.

21. One of the trial justices mentioned in this act [St. 1874, c. 258] shall, within the judicial district of the municipal court of the city of Boston, and at the place mentioned in the foregoing section, be in attendance daily (Sundays and legal holidays excepted) at ten o'clock in the forenoon for the trial of juvenile offenders and hearing applications for the commitment of insane persons; and trial justices in other judicial districts of Suffolk county shall, within their respective districts, hold court for the same purposes, as follows, viz.: In the southern district at two o'clock in the afternoon of each Tuesday; in the Dorchester district at ten o'clock in the forenoon of each Wednesday; in the city of Chelsea at ten o'clock in the forenoon of each Thursday; and in the Charlestown district at ten o'clock in the forenoon of each Friday; and said trial justices may hold their courts on such other days and times as in their opinion justice may require. And within the said county said justices may act, on any day, for each other, when so requested.

Southern dis-
trict.
Dorchester dis-
trict.
Charlestown
district.

CRIERS.

ORDINANCE.¹

Licenses to be
granted to com-
mon criers.
June 10, 1850.
1854, c. 418, § 49.

SECTION 1. The mayor, by and with the advice and consent of the aldermen, may from time to time grant licenses to such and so many persons as he may deem expedient, to be common criers in this city; and such licenses shall continue in force until the first day of May next after the date thereof, unless sooner revoked by the board of aldermen, and no longer.

Term of license.
June 10, 1850.

Crying without
license.
Ibid.

SECT. 2. No person shall be a common crier within the city of Boston, or cry any goods, wares, or merchandise, lost or found, stolen goods, strays, or pub-

¹ An ordinance to regulate common criers, passed June 10, 1850.

lic sales, in any of the streets, squares, lanes, or public places within the city, unless he shall be licensed as aforesaid. June 10, 1850.

SECT. 3. Every person so licensed shall keep a true and perfect list of all the matters and things by him cried, and the names of the persons by whom he was employed to cry the same; which list shall be open, and subject to the inspection of the board of aldermen, whenever they shall demand the same; and no common crier shall publish or cry any abusive, libellous, profane, or obscene matter or thing whatsoever. Criers to keep a list of matters cried, etc. Ibid. Shall not cry libellous matter, etc. Ibid.

SECT. 4. Any person who shall be guilty of a violation of this ordinance, or any part thereof, shall forfeit and pay, for each offence, a sum not less than one dollar nor more than fifty dollars. Penalty for violation. Ibid.

DEEDS.

ORDINANCE.¹

SECTION 1. The mayor of the city is authorized and empowered to affix the common seal of the city unto, and to sign, seal, execute and deliver in behalf of the city, all deeds and leases of lands sold or leased by the city, and all deeds, agreements, indentures, or assurances, made and entered into by order of the city council. Mayor authorized to execute deeds, etc. Nov. 18, 1833.

¹ An ordinance providing for the execution of deeds and leases and discharge of mortgages on behalf of the city, passed November 18, 1833. An ordinance in addition to an ordinance in relation to deeds, passed Oct. 4, 1873.

Mayor authorized to discharge and assign mortgages.
Nov. 18, 1833.

SECT. 2. Whenever any person having lawful authority to redeem an estate mortgaged to the city shall make application to the mayor for such purpose, the mayor shall have power, on the payment of the sum of money due on said mortgage made to the treasurer of the city, to discharge, release, or assign the same without liability or recourse to the city, the assent of the board of aldermen thereto being first had and obtained, and to execute, in behalf of the city, any and all legal instruments that may be necessary for this purpose.

Mayor to execute releases, etc., of redeemed estates on payment of taxes, etc.
Oct. 4, 1873.

SECT. 3. Whenever any person, having lawful authority to redeem an estate sold for non-payment of taxes or assessments and purchased by the city, shall make application to the mayor for such purpose, the mayor shall have power, on the payment of the sum of money due on said estate made to the treasurer of the city, to execute, in behalf of the city, any and all deeds or other legal instruments of release or quitclaim that may be necessary to invest such person with the city's title to said estate.

DOGS.

STATUTES.

Dogs to be registered in April annually.
1867, c. 130, § 1.
See § 5.
100 Mass. 136.

1. Every owner or keeper of a dog shall annually, on or before the thirtieth day of April, cause it to be registered, numbered, described and licensed for one year from the first day of the ensuing May, in the office of the clerk of the city or town wherein said dog is kept, and shall cause it to wear around its neck a collar distinctly marked with its owner's name and its registered

number, and shall pay for such license, for a male dog two dollars, and for a female dog, five dollars. 1867, c. 130, § 1.

2. Any person becoming the owner or keeper of a dog not duly licensed, on or after the first day of May, shall cause said dog to be registered, numbered, described and licensed until the first of the ensuing May, in the manner and subject to the terms and duties prescribed in this act. Dogs may be registered at other times. Ibid. § 2. 4 Allen, 584.

3. Any person becoming the owner or keeper of a dog after the first day of May, not duly licensed, shall cause said dog to be registered, numbered, described and licensed until the first day of the ensuing May, in the manner and subject to the terms and duties prescribed in section one of chapter one hundred and thirty of the acts of the year eighteen hundred and sixty-seven: *provided*, that no dog shall be required to be licensed until it is three months old. Dogs may be licensed after May 1. 1872, c. 330, § 1.

4. Any owner of a dog may, at any time, have it licensed until the first day of the ensuing May, upon paying the sum provided in section one of chapter one hundred and thirty of the acts of the year eighteen hundred and sixty-seven; and such license shall exempt him from the penalty of section five of chapter one hundred and thirty of the acts of the year eighteen hundred and sixty-seven [§ 6 of this digest], unless such complaint was made prior to issuing the license. Owner to be exempt from penalty. Ibid. § 2.

5. In Boston the chief of police shall issue said licenses, and receive the money therefor. He shall keep a record of all licenses issued by him, with the names of the keepers or owners of dogs licensed, and the names, registered numbers and descriptions of all such dogs. Chief of police to issue licenses and keep record. 1867, c. 130, § 3. 1871, c. 41.

6. Any person keeping a dog, contrary to the provisions of this act, shall forfeit fifteen dollars, to be recovered by complaint or indictment,¹ and of said fine or forfeiture five dollars shall be paid to the complainant, and ten dollars shall be paid to the treasurer of the county in which the dog is kept; except that in the county of Suffolk the ten dollars shall be paid to the treasurer of the city or town wherein said dog is kept. A license from the chief of police in Boston shall be valid in any part of the common- Penalty for keeping unlicensed dog. 1867, c. 130, § 5. 1871, c. 41. Transfer of license.

¹ There is no penalty on the owner if he is not the keeper. 107 Mass. 405.

1867, c. 130, § 5. wealth, and may be transferred with the dog licensed: *provided*,
 1871, c. 41. said license be recorded by the clerk of the city or town where such
 dog is kept.

Assessors to
 report dogs.
 1867, c. 130, § 6.

7. The assessors of the cities and towns shall annually take a
 list of all dogs owned or kept in their respective cities or towns, on
 the first day of May, with the owners' or keepers' names, and
 return the same to the city or town clerk on or before the first
 day of July. Any person or keeper of a dog who shall refuse to
 give just and true answers, or shall answer falsely to the assessors,
 relative to the ownership thereof, shall be punished by a fine not
 less than ten dollars, to be paid, except in the county of Suffolk,
 into the county treasury.

Unlicensed dogs
 to be killed.
 Ibid. § 7.
 15 Gray, 61.
 11 Allen, 151.
 1 Met. 555.
 18 Pick. 262.
 100 Mass. 136.
 109 Mass. 273.

8. Mayors of cities and the chairmen of selectmen of towns
 shall annually, within ten days from the first day of July, issue a
 warrant to one or more police officers, or constables, directing
 them to proceed forthwith either to kill, or cause to be killed, all
 dogs within their respective cities or towns, not licensed and
 collared according to the provisions of this act, and to enter com-
 plaint against the owners or keepers thereof, and any person may,
 and every police officer and constable shall, kill, or cause to be
 killed, all such dogs whenever or wherever found. Such officers,
 other than those employed under regular pay, shall receive one
 dollar for each dog so destroyed, from the treasurers of their re-
 spective counties, except that in the county of Suffolk they shall
 receive it from the treasurers of their respective cities or towns.
 All bills for such services shall be approved by the mayor, or
 chairman of the selectmen, of the city or town in which said dogs
 are destroyed, and shall be paid from moneys received under the
 provisions of this act.

Police officers
 to make returns
 of dogs killed.
 Ibid. § 8.

9. Each police officer or constable, to whom the warrant
 named in the preceding section shall have been issued, shall
 return the same, on or before the first day of the October following,
 to the mayor or chairman of selectmen issuing the same, and
 shall state in said return the number of dogs killed, and the
 names of the owners or keepers thereof, and whether all unli-
 censed dogs in his city or town have been killed, and the names
 of persons against whom complaints have been made under the
 provisions of this act, and whether complaints have been entered

against all the persons who have failed to comply with the provisions of this act. 1867, c. 130, § 8.

10. The mayors of cities, and the chairmen of selectmen of towns, shall annually, within ten days from the first day of October, transmit a certificate, regularly subscribed and sworn to, of the fact of the issue of the warrant named in section seven, and whether the same has been duly executed and returned, agreeably to the provisions of this act, to the district attorneys of their respective districts, whose duty it shall be to prosecute all such city, town or county officers as fail to comply with the provisions of this act. Mayor to notify district attorney of issue of warrant. Ibid. § 9.

11. Whoever suffers loss by the worrying, maiming or killing of his sheep, lambs, fowls or other domestic animals by dogs, may inform the mayor of the city, or the chairman of the selectmen of the town wherein the damage was done, who shall proceed to the premises where the damage was done, and determine whether the same was inflicted by dogs, and if so, appraise the amount thereof and return a certificate of said amount, except in the county of Suffolk, to the county commissioners, on or before the first day of December: *provided, however*, that if, in the opinion of said mayor or chairman of selectmen, the amount of said damage shall exceed the sum of twenty dollars, he shall appoint two disinterested persons, who, with the said mayor or chairman of selectmen, shall appraise the amount of such damage, and return a certificate of the same, except in the county of Suffolk, to the county commissioners on or before the first day of December. The county commissioners shall, during the month of December, examine all such bills, and, when any doubt exists, may summon the appraisers and all parties interested, and make such examination as they may think proper, and shall issue an order upon the treasurer of the county in which the damage was done, for all or any part thereof, as justice and equity may require. Damage to animals to be paid by city. Ibid. § 10. 2 Allen, 207. 16 Gray, 125.

The treasurer shall annually, on the first Wednesday of January, pay all such orders in full, if the gross amount received by him and not previously paid out under the provisions of this act is sufficient therefor; otherwise he shall divide such amount *pro rata* among such orders, in full discharge thereof.

The appraisers shall receive from the county, or in the county of Suffolk from the city or town treasurer, out of the moneys

1867, c. 130, § 10. received under the provisions of this act, the sum of one dollar each for every examination made by them, as prescribed in this section; and the mayor or the chairman of selectmen acting in the case shall receive twenty cents per mile one way for his necessary travel in the case.

The owner of sheep, lambs or other domestic animals worried, maimed or killed by dogs, shall have his election whether to proceed under the provisions of this section, or under the provisions of section sixty-one, sixty-two and sixty-three of chapter eighty-eight of the general statutes; but, having signified his election by proceeding in either mode, he shall not have the other remedy. In the absence or sickness of the mayor of the city, or chairman of the selectmen of the town, in which the damage is done, it shall be the duty of any one of the aldermen of said city, or of the selectmen of said town, who may be duly informed of damage supposed to have been done by dogs, to discharge forthwith the duties imposed by this section upon the mayor or chairman of selectmen.

Penalty for neglect of duty. Ibid. § 11.

12. Any city, town or county officer refusing or wilfully neglecting to perform the duties herein imposed upon him shall be punished by a fine not exceeding one hundred dollars, to be paid, except in the county of Suffolk, into the county treasury. Any person aggrieved by such refusal or neglect on the part of any city, town or county officer, may report the same forthwith to the district attorney of his district.

Owners of dogs liable for their injuries to sheep, etc. Ibid. § 12.

13. The treasurer of any county may, and, when ordered by the county commissioner, shall, bring an action of tort against the owner or keeper of any dog concerned in doing damage to sheep, lambs or other domestic animals in said county, which damage the county commissioners have ordered to be paid, to recover the full amount thereof to the use of said county. All fines and penalties provided in this act may be recovered on complaint or indictment, before any court of competent jurisdiction, in the county where the offence is committed.

Unexpended moneys, how disposed of. 1863, c. 250, § 1.

Moneys received by the treasurer of any city or town in the county of Suffolk, under the provisions of this act, and not expended in accordance with its provisions, shall be appropriated by the school committee of said city or town for the support of the public schools therein established.

14. In the county of Suffolk, all moneys received for licenses or recovered as fines or penalties under the provisions of this act, which, if received or recovered in any other county, would be paid into the county treasury, shall be paid into the treasury of the city or town in which said licenses are issued or said fines or penalties recovered. All claims for damage done by dogs in said county shall be determined by appraisers, as specified in section ten of this act, and, when approved by the board of aldermen or selectmen of the city or town where the damage was done, shall be paid in full on the first Wednesday in January of each year by the treasurer of said city or town, if the gross amount received by him and not previously paid out under the provisions of this act is sufficient therefor; otherwise, such amount shall be divided *pro rata* among such claimants in full discharge thereof.

Claims in county of Suffolk, how paid.
1867, c. 130, § 13.

After such claims have been approved by the board of aldermen or selectmen, the treasurer of said city or town may, and, when ordered by the board of aldermen or selectmen, shall, bring an action of tort to recover, against the owner or keeper of any dog concerned in doing the damage, the full amount thereof.

15. Any person owning or keeping a licensed dog, who may have received a notice, in accordance with section sixty-one of chapter eighty-eight of the general statutes, that said dog is mischievous or dangerous, and who does not kill it or keep it thereafter from ever going at large, shall, on complaint or indictment, forfeit ten dollars, if it be proved that said dog be mischievous or dangerous.

Dangerous dogs, how disposed of.
Ibid. § 14.

16. The warrants required to be issued by the seventh section of this act may be in the following form, viz. :—

Warrant, form of, for killing dogs.
Ibid. § 16.

COMMONWEALTH OF MASSACHUSETTS.

[Seal.]

M ss. To , constable of the town (or city) of

In the name of the Commonwealth of Massachusetts, you are hereby required to proceed forthwith to kill, or cause to be killed, all dogs within the said town not duly licensed and collared according to the provisions of the act of the year eighteen hundred and sixty-seven, entitled "An act concerning dogs, and for the pro-

1867, c. 130, § 16. tection of sheep and other domestic animals," and you are further required to make and enter complaint against the owner or keeper of any such dog.

Hereof fail not, and make due return of this warrant, with your doings therein, stating the number of dogs killed and the names of the owners or keepers thereof, and whether all unlicensed dogs in said town (or city) have been killed, and the names of persons against whom complaints have been made under the provisions of said act, and whether complaints have been made and entered against all the persons who have failed to comply with the provisions of said act, on or before the first day of October next.

Given under my hand and seal at aforesaid, the day of in the year eighteen hundred and

(Mayor of) or Chairman of the
Selectmen of

For removing
collar, stealing
dog, etc.

G. S. c. 88, § 57.

For exposing
poisons, etc.

17. Whoever wrongfully removes the collar from or steals a dog, licensed and collared as aforesaid, shall be punished by fine not exceeding fifty dollars; and whoever wrongfully kills, maims, entices, or carries away such a dog, shall be liable to its owner for its value in an action of tort. Whoever distributes or exposes any poisonous substance, with intent that the same shall be eaten by any dog, shall be punished by fine not exceeding fifty nor less than ten dollars.

Persons injured
to recover
double, etc.

Ibid. § 59.

20 Pick. 477.

12 Met. 291.

12 Cush. 278.

11 Gray, 29.

1 Allen, 191.

3 Allen, 101, 191.

109 Mass. 273.

117 Mass. 109.

When any per-
son may kill,
etc.

G. S. c. 88, § 60.

13 Johns. 312.

4 Cowen, 351.

Dangerous, to
be confined by
owner or killed.

G. S. c. 88, § 61.

See § 15, ante.

18. Every owner or keeper of a dog shall forfeit to any person injured by it double the amount of the damage sustained by him, to be recovered in an action of tort.

19. Any person may kill a dog that shall suddenly assault him while he is peaceably walking or riding without the enclosure of its owner or keeper; and any person may kill a dog that is found out of the enclosure or immediate care of its owner or keeper, worrying, wounding, or killing any neat cattle, sheep, or lambs.

20. If any person so assaulted, or finding a dog strolling out of the enclosure or immediate care of its owner or keeper, shall, within forty-eight hours after such assault or finding, make oath thereof before a justice of the peace or police court for the county, or before the clerk of the city or town where the owner of the dog dwells, and shall further swear that he suspects the dog to be dan-

gerous or mischievous, and shall give notice thereof to its owner or keeper by delivering him a certificate of such oath, signed by such justice or clerk, the owner or keeper shall forthwith kill or confine it; and if he neglects so to do for twenty-four hours after such notice, he shall forfeit ten dollars. G. S. c. 88, § 61.

21. If, after such notice, the dog is not killed or confined, but is again found strolling out of the enclosure or immediate care of its owner or keeper, any person may kill it. After notice, any person may kill. Ibid. § 62.

22. If a dog, after such notice to its owner or keeper, shall by such assault wound or cause to be wounded any person, or shall worry, wound, or kill any neat cattle, sheep, or lambs, or do any other mischief, the owner or keeper shall be liable to pay to the person injured thereby treble damage, to be recovered in an action of tort. Liability of owner in case, etc. Ibid. § 63.

23. The city council of any city, and the inhabitants of any town, may make such additional by-laws and regulations concerning the licensing and restraining of dogs, as they deem expedient, and may affix any penalties, not exceeding ten dollars, for any breach thereof; but such by-laws and regulations shall relate only to dogs owned or kept in such city or town; and the annual fee required for a license shall in no case be more than one dollar in addition to the sum required by section one. Cities and towns may make by-laws, etc. Fees for license. Ibid. § 67.

24. All fines and penalties provided in the preceding sections may be recovered on complaint before any police court or trial justice in the county where the offence is committed. Fines, etc., how recovered. Ibid. § 68.

ORDINANCE.¹

SECTION 1. On complaint being made to the mayor, of any dog within this city which shall, by barking, biting, howling, or in any other way or manner, disturb the quiet of any person or persons whomsoever, the mayor shall issue notice thereof to the person owning, keeping, or permitting such dog to be kept; and in case such person shall neg-

Proceedings in case any dog shall disturb the quiet of any person, by barking, etc. June 4, 1850.

¹ An ordinance restraining the going at large of dogs in the city of Boston, passed June 4, 1850.

June 4, 1850.

lect to cause such dog to be forthwith removed and kept beyond the limits of the city, or destroyed, he shall forfeit and pay one dollar for every day during which such neglect shall continue after such notice: *provided*, that the justice before whom the complaint respecting such dog shall be heard and tried, shall be satisfied that such dog had, in the manner aforesaid, disturbed the quiet of any person or persons in the said city.

ELECTIONS.

STATUTES.

QUALIFICATIONS OF VOTERS.

Qualifications
of voters at
town, county,
and other elec-
tions.

Amend. const.
arts. 3, 20, 23.
1874, c. 376, § 1.
8 Mass. 77.
11 Mass. 450.
17 Pick. 298.
11 Pick. 538.
1 Met. 580.
5 Met. 162, 293,
587, 591.
7 Gray, 299.

Rights of In-
dians not to be
abridged.

1874, c. 376, § 56.

1. Every male citizen of twenty one years of age and upwards (except paupers, persons under guardianship, and persons excluded by article twenty of the amendments to the constitution), who has resided in the state one year, and within the city or town in which he claims a right to vote, six months next preceding any election of city, town, county or state officers or of representatives to congress, or electors of president and vice-president, and who has paid, by himself, his parent, master or guardian, a state or county tax assessed upon him in this state within two years next preceding such election, and every citizen exempted from taxation but otherwise qualified, shall have a right to vote in all such elections; and no other person shall have such right to vote. Nothing contained in this section shall be construed to limit or abridge the rights of Indians, and people of color heretofore known and called Indians, within this commonwealth, as declared by chapter one hundred and eighty-four of the acts of the year one thousand eight hundred and sixty two, and chapter four hundred and sixty-three of the acts of the year one thousand eight hundred and sixty-nine.

Not to be al-
lowed to vote

2. In any election of representatives to congress, no person shall be allowed to vote for the same until he shall have resided in

the congressional district where he offers to vote, six months next preceding such election, and shall be otherwise qualified according to the constitution and laws: *provided*, that when the state shall be districted anew for members of congress, he shall have the right so to vote in the district where he is located by such new arrangement: and *provided, also*, that no voter residing in any city which now is, or hereafter may be, divided by the line between congressional districts, shall be deprived of his vote in the district in which he was assessed, or liable to assessment, on the first day of May next preceding such congressional election, if he be otherwise qualified.

3. The collectors of state and county taxes in each city and town shall keep an accurate account of the names of all persons from whom they receive payment of any state or county tax, and of the time of such payment; and, upon request, shall deliver to the person paying the same a receipt specifying his name and time of payment; and such receipts shall be admitted as presumptive evidence thereof.

4. The collectors, whether the time for which they were chosen has expired or not, shall, twice in each year, namely, once not more than twenty nor less than fifteen days before the annual city or town elections, and once not more than twenty nor less than fifteen days before the Tuesday next after the first Monday in November, return to the mayor and aldermen¹ and selectmen of their respective cities and towns, an accurate list of all persons from whom they have received payment of any state or county tax subsequently to the time appointed for making their last preceding return.

5. Every collector neglecting to make such return shall forfeit one hundred dollars for each neglect; and twenty dollars for every name in respect to which he makes a false return.

6. When any person, on or before the fifteenth day of September, in any year, gives notice in writing, accompanied by satisfactory evidence, to the assessors of a city or town, that he was, on the first day of May of that year, an inhabitant thereof, and liable to pay a poll-tax, and furnishes under oath a true list of his polls and estate, both real and personal, not exempt from

for representative in congress unless he has resided in district six months. 1874, c. 376, § 2.

Provisos.

Collectors to keep account of names of persons paying state or county tax.

Ibid. § 3.

To give receipt upon request.

To return to selectmen, etc. twice a year, lists of persons who have paid taxes.

Ibid. § 4.

4 Pick. 118.

7 Pick. 236.

Penalty for neglect, or making a false return. 1874, c. 376, § 5.

Assessment of taxes upon polls and estate.

Ibid. § 6.

¹ In Boston to registrars of voters. 1874, c. 60, §§ 2, 5.

1874, c. 376, § 6. taxation, the assessors shall assess him for his polls and estate; but such assessment shall be subject to the provisions of chapter one hundred and twenty-one of the acts of the year one thousand eight hundred and sixty-five; and the assessors shall, on or before the first day of October, deposit with the clerk of the city or town a list of the persons so assessed. The taxes so assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant.

Soldiers and sailors may be assessed and vote, on payment of tax. 1865, c. 68, § 1.

7. Whenever any person shall make application to the assessors of any city or town of this commonwealth, to be assessed a poll-tax for the then current year, and it shall appear that such applicant was, on the first day of May preceding, a resident of said city or town and liable to pay a poll-tax therein, but was not assessed therefor, and that such applicant is, or has been during any portion of the two years preceding such application, engaged in the military or naval service of the United States, it shall be the duty of such assessors forthwith to assess such tax, and notify the treasurer of such city or town of the same, and the person so assessed shall, upon payment of said tax, be entitled to the right to vote in said city or town to the same extent as if his taxes had been assessed and paid in the manner heretofore provided by law.

Assessment of taxes in ward where inhabitant dwells. 1876, c. 225, § 1. 11 Met. 339.

8. In the several cities of this commonwealth it shall be the duty of the assessors to assess each inhabitant thereof who is liable to assessment for the payment of taxes, as of the first day of May in each year, in the ward of such city in which such inhabitant dwells or has his home.

Lists of voters in wards. 1876, c. 225, § 2. 5 Met. 164. 5 Met. 591. 11 Pick. 538.

9. In the several cities of this commonwealth it shall be the duty of the officers or board charged with the preparation of the alphabetical list of voters to be used at elections, to enter the name of each qualified voter upon the list for the ward in which he was assessed, or was liable to assessment, agreeably to the preceding section.

Assessment in wrong ward may be rectified upon application to proper officers. Ibid. § 3.

10. If the assessor shall have assessed any person in another ward than the ward in which he claims to dwell or have his home, such person may, on or before the first day of September in any year, file with the officers or board charged with the preparation of the alphabetical list of voters, a notice of his claim to be regis-

tered in some other ward, specifying the same; and as soon as may be after said first day of September, the said officers or board shall notify said person, fixing a time and place of hearing; and after such hearing the said officers or board may change the ward of registry if need be, in any case; and they shall forthwith after such change give notice thereof to the assessors; and the name of no person shall be registered in any other ward than that in which he was assessed, unless a claim for such registration shall have been filed as provided in this section.

11. If a person possessing the qualifications prescribed by the constitution and laws for voting in any city of this commonwealth shall remove from one ward to another ward within the same city after the first day of May, and prior to any election, he shall not lose his right to vote at such election by reason of such removal, but he shall have the right to vote in the ward in which he was assessed or was liable to assessment on the first of May, as aforesaid, if he be otherwise qualified, and in no other ward; and said officers or board shall enter his name accordingly.

12. The entry upon the voting-list of any ward, agreeably to the provisions of the foregoing section, of the name of any person who has removed from such ward into another ward after the first day of May, and prior to any election, shall not be taken or held to be evidence that he is an inhabitant of the ward from which he thus removed.

13. Nothing contained in this act shall be construed to give the right to vote in any election in a city to any person who has ceased to be an inhabitant of such city prior to such election, although he may have been assessed therein as of the first day of May preceding; and said officers or board, in the revision of the lists, shall erase the names of all persons who have thus ceased to be inhabitants of the city. If the person so removing shall become an inhabitant of any other city or town in this commonwealth, he may acquire the right to vote therein agreeably to the provisions of the constitution and laws respecting the qualifications of voters. When any person becomes an inhabitant of any city after the first day of May, and prior to any election, at which election he is entitled to vote agreeably to such provisions, said officers or board shall enter his name in the voting-list of the ward of which he shall become an inhabitant.

11 Mass. 421.
5 Met. 587.
17 Pick. 234.
11 Cu-h. 362.
6 Gray, 517.
13 Gray, 586.
98 Mass. 159.
105 Mass. 93.
115 Mass. 103.

If voter removes from one ward to another after May 1st, he may vote where assessed.
1876, c. 223, § 4.

Entry of change on list not to be evidence that he is an inhabitant of ward removed from.
Ibid. § 5.

Not to be construed as giving right to vote to person who has ceased to be an inhabitant of the city.
Ibid. § 6.
10 Mass. 488.
11 Mass. 350.
5 Met. 587.
12 Allen, 111.

REGISTRARS OF VOTERS.¹

Board of registrars of voters to be appointed by the mayor and aldermen. 1874, c. 60, § 1.

14. There shall be appointed by the mayor and aldermen of the city of Boston as soon as may be after the passage of this act, three able and discreet persons, inhabitants of said city, to be styled the board of registrars of voters. One of said registrars shall hold his office for the term of three years, one for the term of two years, and one for the term of one year, from the first day of April in the year eighteen hundred and seventy-four. And annually thereafter, in the month of February or March, the mayor and aldermen shall appoint one person qualified as aforesaid to be a registrar of voters for the term of three years from the first day of April in the year of his appointment. And in case of a vacancy in the office of registrar by reason of death, resignation or removal, the mayor and aldermen shall fill such vacancy by the appointment of a person qualified as aforesaid, to hold office for the residue of the term.

To perform all duties respecting preparation of voting-lists heretofore required of mayor and aldermen. Ibid. § 2.

15. The registrars shall, in addition to the duties imposed upon them by this act, perform all and singular the duties devolved upon the mayor and aldermen or board of aldermen by any general or special laws which now are or hereafter may be in force, respecting the preparation, correction, revision, publication, and transmission to the ward officers, of the alphabetical lists of voters to be used at elections in said city; and all the powers so conferred, and all the duties and liabilities so imposed upon the mayor and aldermen, or board of aldermen of said city in relation to the preparation, correction, revision, publication and transmission of said lists are hereby conferred and imposed exclusively upon said registrars.

To be sworn. Ibid. § 3.

Compensation.

16. The registrars shall, before entering upon the duties of their office, take and subscribe an oath faithfully to perform the same. They shall receive such annual compensation as the city council may from time to time determine; but any reduction of compensation shall take effect upon such registrars only as shall be appointed after such reduction.

¹ This act, in relation to the registration of voters in Boston, took effect upon its acceptance by the city council. It was accepted April 17, 1874.

17. The registrars shall annually, between the first day of May and the first day of October, appoint assistant registrars of voters, inhabitants of said city, not exceeding two for each ward, who shall be sworn by one of the registrars to the faithful discharge of their duties, and shall hold office for the remainder of the municipal year, unless sooner discharged by the registrars. They shall receive such compensation as the city council may from time to time determine; but such compensation shall not be regulated by the number of names registered on any list of voters.

To appoint
assistant regis-
trars.
1874, c. 60, § 4.

Compensation.

18. The registrars and the assistant registrars under their direction, shall prepare, correct, revise and publish, in accordance with this act and with the laws of the commonwealth, the alphabetical lists of voters of each ward; and the collectors of taxes of said city shall make the return, now required by law to be made to the mayor and aldermen, to the board of registrars of voters; and all assessors and collectors of taxes of said city shall furnish any information in their possession, necessary to aid the registrars and assistant registrars in the discharge of their respective duties.

To prepare and
publish lists of
voters.
Ibid. § 5.

Collectors of
taxes to make
return to board.

19. The registrars shall, at least twenty days before the day of the annual state election, cause printed lists of the voters in each ward to be posted in three or more places in such ward, with notices thereon, stating the place and hours in which they or the assistant registrars for such ward will hold sessions to correct and revise the lists. Such sessions shall be held in or near each ward, three or more hours daily, for at least twelve days within the twenty days immediately preceding the annual state election, and in addition, six evening sessions, of at least two hours length each, shall be held within said twenty days. If the assistant registrars refuse to place the name of any person on the voting-list he may appeal to the board of registrars of voters.

To post lists in
each ward
twenty days be-
fore state elec-
tion.
Ibid. § 6.

20. The registrars may make such rules and regulations, not contrary to law, for the government of the assistant registrars and for carrying out the provisions of this act, as they may deem necessary.

To make rules
and regulations
for government
of assistants.
Ibid. § 7.

21. The city council shall furnish office-room for the registrars, and shall, when requested by them, provide in or near each ward a suitable room for their sessions.

To be furnished
with office-
room.
Ibid. § 8.

May remove any officer appointed by them.
1874, c. 60, § 9.

22. The registrars may remove any officer appointed by them, may fill vacancies, and may make temporary appointments in case of absence.

No person holding office under city, state or nation to be appointed registrar or assistant.
Ibid. § 10.

23. No person who holds an office by election or appointment under the government of the United States, of the commonwealth, or of the city of Boston, except justices of the peace and officers of the militia, shall be appointed registrar or assistant registrar; and the appointment or election of a registrar or assistant registrar to any such office and his acceptance thereof, shall be deemed to be a resignation of his office of registrar or assistant registrar.

Penalty for giving false name or false answer to registrars.
Ibid. § 11.

24. Whoever gives a false name or a false answer to any registrar or assistant registrar concerning any matter relating to the registration of voters, or to the right of any person to vote, shall incur the same penalty which is provided by law for giving a false name or false answer to the selectmen of towns when in session to correct the list of voters.

Penalty for neglect of official duty.
Ibid. § 12.

25. Any registrar or assistant registrar who wilfully neglects or refuses to perform the duties of his office shall for each offence forfeit a sum not exceeding two hundred dollars.

VOTING-LISTS.

Lists of voters to be posted up ten days before election.
1874, c. 376, § 7.

26. The mayor and aldermen¹ of cities, and selectmen of towns, shall at least ten days before the annual city and town elections, and at least ten days before the Tuesday next after the first Monday in November, annually, make correct alphabetical lists of all the persons qualified to vote for the several officers to be elected at those periods, and shall at least ten days before said elections cause such lists to be posted up in two or more public places in their respective cities and towns.²

Mayor and aldermen to be in session second day before election, to correct voting-lists.
Ibid. § 9.
1875, c. 188.
7 Allen, 155.

27. The mayor and aldermen of cities shall be in session on the *second* day immediately preceding the meeting for any election, and for as much longer time previous to said *second* day as they judge necessary, for the purpose of receiving evidence of the qualification of persons claiming a right to vote at such meeting, and of correcting the lists of voters; and they shall give notice of the

¹ In Boston these duties are devolved on the "registrars of voters." 1874, c. 60.

² See § 19, *ante*.

time and place of holding the sessions upon lists of voters posted up as required by section seven of this act. When the *second* day immediately preceding such meeting is Sunday, such session shall be held on the Saturday preceding. In addition to giving the foregoing notice, the mayor and aldermen of cities shall also, in their notices to the inhabitants of a meeting for any election, state the day of the month when registration will cease, and also that, after the close of said registration, no name will be entered on the check-list, except as provided by the section following.

28. The name of no person shall be added to the voting-lists in any city after the lists have been placed in the hands of the ward officers, unless the qualifications of said person as a voter shall have been determined by the mayor and aldermen, at some meeting held previous to the opening of the polls; such fact to be verified by the certificate of the city clerk.

Additions to lists after being placed in hands of ward officers. 1874, c. 376, § 10. 10 Cush. 143. 5 Met. 162.

29. The mayor and aldermen and selectmen, before entering upon the lists the name of a naturalized citizen, shall require him to produce for their inspection his papers of naturalization and be satisfied that he has been legally naturalized; but they need not require the production of such papers after they have once examined and passed upon them.

Naturalization papers to be produced for inspection. 1874, c. 376, § 15.

30. Whoever gives a false name or a false answer to the mayor and aldermen or selectmen, when in session for the purposes aforesaid, shall forfeit the sum of thirty dollars for each offence.¹

Penalty for giving false name. Ibid. § 16.

31. ²The mayor and aldermen and selectmen, if they have duly entered on said lists the names of all persons returned to them by the collectors, shall not be answerable for any omissions therefrom.

Names to be entered as returned by collectors. Ibid. § 17. 3 Allen, 1, 3.

32. A city or town officer, who wilfully neglects or refuses to perform any duty required of him by the provisions of this act, shall for each offence forfeit a sum not exceeding two hundred dollars.

Penalty on officer for neglect. Ibid. § 18.

MEETINGS OF ELECTORS.

33. Meetings for the election of national, state, district and county officers may be opened as early as seven o'clock in the forenoon, and shall be opened as early as two o'clock in the afternoon

Meeting may be opened as early as 7 A. M., and shall be opened as early as 2 P. M. Ibid. § 19.

¹ See § 24, *ante*.

² 11 Mass. 350; 5 Met. 162, 298; 4 Gray, 433; 23 Pick. 308; 3 Allen, 1; 7 Allen, 155.

1874, c. 376, § 19. of the election day, and the mayor and aldermen and selectmen shall decide whether such officers shall be voted for on one ballot or at the same time on separate ballots, and shall give notice thereof in the warrant calling the meeting.

Meetings in cities.

Ibid. § 20.

98 Mass. 557.

34. Such meetings in cities shall be called according to the provisions of the acts establishing them and the acts in addition thereto, and the warrant for notifying such meetings shall specify the time when the polls for the choice of the several officers shall be opened and the hour at which the polls shall be closed; and the polls shall be kept open at least two hours; but in no case shall the polls be kept open after the hour of sunset.

ENVELOPES TO BE FURNISHED.

Secretary of commonwealth to provide envelopes.

G. S. c. 7, § 4.

35. The secretary of the commonwealth shall provide and keep constantly in his office a sufficient number of self-sealing envelopes to supply all the voters in the commonwealth, and shall furnish the same to the clerks of the several cities and towns when applied for. Such envelopes shall be of uniform size and color and bear the arms of the commonwealth, and no other envelopes shall be used at the polls.

Clerks to procure envelopes from secretary.

Ibid. § 5.

36. The city and town clerks shall obtain from the secretary such number of envelopes as may be sufficient to meet the wants of the voters of their respective cities and towns, and keep the same subject to the order of the selectmen of towns, or the wardens and inspectors of cities.

Selectmen, etc., to provide envelopes at polls.

Ibid. § 6.

37. The ward officers in each city, and the selectmen of each town, shall obtain from the city or town clerks, and provide at the polls on the day of election, a sufficient number of such envelopes, and supply each person claiming to be a voter in said city or town, on his personal application, with such number as the pending election may require, and return to the clerk all envelopes not used.

Fraudulently obtaining envelopes.

Ibid. § 7.

38. Whoever wilfully claims to be a voter, knowing that he is not a voter where the claim is made, and by reason thereof fraudulently obtains an envelope from the persons having the custody of the same on the day of the election, shall be liable to a fine of not less than ten nor more than fifty dollars.

MANNER OF CONDUCTING ELECTIONS.

39. No vote shall be received by the presiding officers at any election provided for in this chapter [*i. e.*, at any election for national, state, district, county, city or town officers] unless presented for deposit in the ballot-box by the voter in person in a sealed envelope, or open and unfolded, and so that such officers can know but one ballot is presented.

Votes, how deposited.
G. S. c. 7, § 12.
23 Pick. 308.

40. Votes for different persons for the same office found in one envelope shall not be counted, and if more than one vote for the same person for the same office is found in one envelope, but one such vote shall be counted, and no vote shall be counted which does not clearly indicate in writing the office for which the person voted for is designed, except when but one officer is voted for

Votes, when to be rejected, etc.
G. S. c. 7, § 13.

41. In all elections of civil officers by the people, the person or persons having the highest number of votes shall be deemed and declared to be elected; but no persons receiving the same number of votes shall be deemed to be elected, if thereby a greater number would be elected than required by law.

Results of elections, how determined.
Ibid. § 14.
Amend. const. art. 14.

42. The votes in elections for national, state, county, and district officers shall be received, sorted, and counted, by the selectmen, and by the ward officers, and public declaration made thereof in open town and ward meetings. The names of persons voted for, the number of votes received for each person, and the title of the office for which he is proposed, shall be entered in words at length by the town and ward clerks in their records.¹ The ward clerks shall forthwith deliver to the city clerks certified copies of such records, who shall forthwith enter the same in the city records.

Selectmen and ward officers to count votes.
G. S. c. 7, § 15.

43. Until the close of the polls and the public declaration of the vote at an election in any city, no statement shall be made by any warden, inspector or clerk, of the number of ballots cast, the numbers of voters present, the number of votes given for any person or for any officer, the name of any person who has voted, the name of any person who has been voted on, nor of any other fact tending to show the state of the polls.

Statement of number of votes, etc., not to be made before close of polls.
1874, c. 376, § 54

¹ See § 54, which requires *the whole number of ballots* also to be stated in words at length; provided, etc.

Penalty.

1874, c. 376, § 55.

44. Any warden, ward clerk, or inspector, violating the provisions of the preceding section of this act, shall be punished by a fine of not more than one hundred dollars or imprisonment in the house of correction for twenty days.

ELECTION OF WARD OFFICERS.¹

Ward officers to
issue certificates
of election of
ward officers.
Ibid. § 51.

45. At each municipal election in any city, it shall be the duty of the ward officers of the several wards to make out and sign certificates of the election of such ward officers as are chosen at such election, in the manner now provided by law, and said certificates for each ward shall be placed in one envelope, indorsed "Ward officers chosen in ward number ," and transmitted to the city clerk, who shall retain said envelopes unopened for twenty days subsequent to the day of said election, and he shall then open said envelopes, and transmit said certificates to the persons who appear to be thus chosen.

Recount of
ballots.
Ibid. § 52.

46. If, within said twenty days, a statement, in writing, is filed with the city clerk, signed by ten legal voters in any ward, stating that they believe that the warden, or clerk, or any inspector of elections of said ward, who has been declared elected, did not receive a plurality of the votes cast on the preceding election day, it shall be the duty of the city clerk to lay the same before the board of aldermen for the time being, who shall proceed to count the original ballots cast for such warden, clerk or inspector, and shall declare the result, and shall issue a certificate to the person entitled thereto: *provided*, that this act shall not apply to ward officers chosen to fill vacancies on election day.

ELECTION OF REPRESENTATIVES TO GENERAL COURT.²

Voters to be
notified to bring
votes on one
ballot for repre-
sentatives.
Ibid. § 24.

47. Warrants for meetings for the election of representatives to the general court shall direct that the voters in towns, cities and wards be notified to bring in their votes on one ballot for the representatives to which their several districts are entitled, and shall specify the number thereof. And such elections shall be conducted and the results thereof determined as provided in chap-

¹ For provisions in relation to the manner of electing ward officers in Boston, see "Wards and Ward Officers," p. 865.

² For representative districts, see §§ 82, 83, p. 253.

ter seven of the General Statutes, except as otherwise provided in this act.

48. When it is ascertained who is elected representative in a district, composed of one town or city, or one or more wards of a city, the selectmen or mayor and aldermen shall make out duplicate certificates thereof, one of which they shall transmit to the office of the secretary of the commonwealth on or before the first Wednesday in January following, and the other by a constable or other authorized officer to the person elected, within ten days after the day of election.

Duplicate certificates of election to be made by selectmen, etc.
1874, c. 376, § 29.

49. When the clerks of cities, towns and wards composing a district, at their meeting for the purpose, ascertain that a representative is elected in their district, they or a majority of them shall make out duplicate certificates thereof, one of which they shall deliver into the office of the secretary of the commonwealth, on or before the first day of January following, and the other by a constable or other authorized officer transmit to the person elected, within ten days after the day of election.

Duplicate certificates by clerks.
Ibid. § 30.

50. Such certificates of election shall be in substance as follows:—

Commonwealth of Massachusetts, county of _____
Pursuant to a law of this commonwealth, the qualified voters of Representative District Number _____, in their several meetings on the _____ day of November instant, for the choice of representatives in general court, did elect _____, being inhabitants of said district, to represent them in the general court to be holden on the first Wednesday of January next.

Form of certificate.
Ibid. § 31.

Dated at _____ the _____ day of _____ in the year one thousand eight hundred and _____.

Such certificate shall have a return thereon, signed by the officer authorized to give such notice, and stating that notice of the choice was given to the persons therein mentioned, and that said persons were summoned to attend the general court accordingly.

51. If it shall appear that no choice of representative has been effected by reason of two or more persons having the same number of votes so that no person has a plurality, a certificate of the fact

If no choice is effected, certificate of the fact to be transmitted to secretary of

the common-
wealth.
1874, c. 376, § 32.

shall be transmitted to the secretary of the commonwealth by the same officers and in the same manner as is provided in sections twenty-nine and thirty of this act [§§ 48 and 49 of digest] for one of the certificates of election in cases when an election is made.

Vacancy in rep-
resentative dis-
trict.
Ibid. § 33.

52. When a vacancy occurs in a representative district, the speaker of the house of representatives shall, in the precept which he may issue by order of the house giving notice of such vacancy, appoint a time for an election to fill the same. Upon the reception of such precept, the mayor and aldermen of a city and the selectmen of the towns comprising the district, shall issue their warrants for an election on the day named in the precept; and similar proceedings shall be had in filling such vacancy as in the original election of representatives.

Secretary of
commonwealth
to furnish blank
forms, etc.
Ibid. § 34.

53. The secretary of the commonwealth shall furnish to cities and towns blank forms for certificates, transcripts and returns required under this act. Such blanks for returns shall have printed thereon sections twenty-nine, thirty, thirty-one and thirty-two of this act [§§ 48, 49, 50, 51 of this digest], and the first four sections of chapter two of the General Statutes.

RETURNS OF ELECTIONS.

Number of bal-
lots to be dis-
tinctly stated in
words at length.
Ibid. § 35.
1876, c. 188, § 8.

54. In all returns of elections the whole number of ballots given in shall be distinctly stated in words at length; and blank pieces of paper shall not be counted as ballots: *provided*, that the omission to state the whole number of ballots shall not make the return invalid in any case in which the true result of the election can be ascertained from the other parts of the return, *or by a recount made in conformity with the provisions of law.*

Penalty on
clerks for false
certificate.
1874, c. 376, § 37.

55. Clerks wilfully signing a certificate not in conformity with the result of an election, as apparent by the transcripts and returns, shall forfeit a sum not exceeding three hundred dollars.

Mayor and al-
dermen and
clerk to examine
returns, and, if
faulty, to re-
quire new re-
turns.

56. The mayor and aldermen and the clerk of each city shall forthwith, after an election, examine the returns made by the returning officers of each ward in such city, and if any error appears therein they shall forthwith notify said ward officers thereof, who shall forthwith make a new and additional return, under oath, in conformity to truth; which additional return, whether made upon notice or by such officers without notice, shall be

Other regula-
tions.

received by the mayor and aldermen or city clerk at any time before the expiration of the day preceding that on which by law they are required to make their returns or to declare the results of the election in said city; and all original and additional returns so made shall be examined by the mayor and aldermen and made part of their returns of the results of such election. In counting the votes in an election no returns shall be rejected when the votes given for each candidate can be ascertained. G. S. c. 7, § 16.

57. City and town clerks shall, within ten days from the day of an election for governor, lieutenant-governor, councillors, senators, secretary, treasurer and receiver-general, auditor, attorney-general, representatives in congress, commissioners of insolvency, sheriffs, registers of probate and insolvency, district-attorneys, or clerks of the court, transmit copies of the records of the votes, attested by them, certified by the mayor and aldermen or selectmen, and sealed up, to the secretary of the commonwealth; they shall in like manner, within ten days after an election for county treasurer or register of deeds, transmit such copies of the records of the votes to the county commissioners of their several counties; and, within seven days after an election for county commissioners, transmit such copies of the records of the votes to the clerks of the courts for their several counties; but in Suffolk the return of votes for register of deeds shall be made to the board of aldermen of Boston; and in Chelsea, Revere, and Winthrop, the returns of votes for county commissioners shall be made to the clerk of the courts for the county of Middlesex. Or within three days after such elections, such clerks may deliver such copies, sealed up, to the sheriffs of their several counties, who within seven days after receiving them shall transmit them to the office of the secretary, and to the county commissioners, board of aldermen, and clerks of courts, as severally above designated. City and town clerks to make returns of votes to secretary, etc. G. S. c. 7, § 17. 13 Gray, 83.

58. When a return of votes from a city or town is received at the office of the secretary of the commonwealth, not sealed up, as by law required, he shall forthwith give notice thereof to the returning officers; who upon the receipt of such notice shall make a copy of their record of the votes at said election and transmit the same, certified by them under oath to be correct, to the secretary, sealed up as required by law in the case of original returns. When return is unsealed, secretary to give notice to returning officers, who shall transmit a sealed copy. G. S. c. 7, § 19.

G. S. c. 7, § 19. If such copy is received by the secretary before the day on which by law the returns are to be opened and the votes counted, and if upon opening said copy by the governor and council, the legislature, or any person authorized so to do, the original return is found in substantial conformity therewith, it shall not be rejected because of informality.

Secretary to furnish blanks, etc., to cities and towns. Ibid. § 20.

59. The secretary shall annually furnish to the several clerks of the cities and towns blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelopes as he deems necessary for the guidance and direction of such officers in making the returns according to law.

PRESERVATION OF BALLOTS AND CHECK-LISTS.

Ballots which have been given in to be secured in a sealed envelope. 1874, c. 376, § 40.

60. In all elections in cities, whether the same shall be for United States, state, county, city or ward officers, it shall be the duty of the warden, or other presiding officer, to cause all ballots which shall have been given in by the qualified voters of the ward in which such election has been held, and after the same shall have been sorted, counted, declared and recorded, to be secured in an envelope, in open ward meeting, and sealed with a seal provided for the purpose; and the warden, clerk, and a majority of the inspectors of the ward, shall indorse upon the envelope for what offices and in what ward the ballots have been received, the date of the election, and their certificate that all the ballots given in by the voters of the ward, and none other, are contained in said envelope.

Ballots to be transmitted to city clerk. Ibid. § 41.

61. The warden, or other presiding officer shall forthwith transmit the ballots, sealed as aforesaid, to the city clerk, by the constable in attendance at said election, or by one of the ward officers other than the clerk; and the clerk shall retain the custody of the seal, and deliver the same, together with the records of the ward and other documents, to his successor in office.¹

Ballots to be destroyed without examination, after being kept the required time.

62. The clerk of each city shall receive the envelopes containing the ballots thrown at any election, sealed as provided in section forty of chapter three hundred and seventy-six of the acts of the year eighteen hundred and seventy-four [§ 60 of digest] and

¹ See "Wards and Ward Officers," p. 865.

shall retain them in his care until the requirements of this act, or of 1876, c. 188, § 1. any act which may hereafter be passed in amendment hereof, have been complied with ; and as soon as may be thereafter the said clerk shall cause such ballots to be destroyed without examining them or permitting them to be examined by any person whatsoever, and shall make an entry in the records of the city that they have been so destroyed.

63. If within thirty days next following the day of an election a person who received votes for any office at said election shall serve upon the clerk of any city or town by himself, his agent or attorney, a statement in writing claiming an election to such office, or declaring an intention to controvert or dispute the election of any other person who has received, or who may receive, a certificate of election for the same, the clerk of such city or town shall retain the envelope containing the ballots thrown at such election, sealed as provided by law, subject to the order of the body to which either of said persons may claim or be held to have been elected, or until such claim shall have been withdrawn or such election shall have been decided by the authority competent to determine the same.

Ballots to be retained by clerk until a disputed election is determined.
Ibid. § 2.

64. If within three days next following the day of any election ten or more qualified voters of any ward shall file with the city clerk a statement in writing that they have reason to believe that the returns of the ward officers are erroneous, specifying wherein they deem them in error, said city clerk shall forthwith transmit such statement to the board of aldermen or the committee thereof appointed to examine the returns of said election. The board of aldermen, or their committee, shall thereupon and within five days, Sunday excepted, next following the day of election, open the envelope and examine the ballots thrown in said ward, and determine the questions raised ; they shall then again seal the envelope, either with the seal of the city, or a seal provided for the purpose, and shall indorse upon said envelope a certificate that the same has been opened and again sealed by them in conformity to law ; and the envelope, sealed as aforesaid, shall be returned to the city clerk. Said city clerk, upon the certificate of the board of aldermen, or of their committee, shall alter and amend such of the ward returns as have been proved to be erroneous, and such amended returns shall stand as the true returns of the ward.

Disputed elections in cities,
Ibid. § 4.

Result of election, when may be declared.

1876, c. 188, § 5.

65. The board of aldermen shall not declare the result of an election, until the time specified in the preceding section for filing a request for a recount of ballots shall have expired, or in case of such request having been made, until the said ballots have been examined and the returns amended, if found erroneous, any provision in the charter of any city or in any act in amendment thereof to the contrary notwithstanding.

Ward clerks to be provided with suitable seals.

Ibid. § 6.

66. The clerk of each city shall cause to be furnished to the clerks of the several wards a seal of suitable device, the design for which shall include the number or designation of the ward for which it is furnished; and said seal may be used in sealing the envelopes containing the ballots thrown at any election.

Check-list to be inclosed and sealed up.

1874, c. 376, § 43.

67. In all elections in cities in which a check-list is required by law to be used, the warden or other presiding officer of each ward shall cause the check-list so used to be inclosed and sealed in an envelope in the same manner as the ballots cast at said election are required by law to be secured by section forty of this act [§ 60 of this digest] and the warden, clerk and a majority of the inspectors in each ward shall certify on such envelope to the identity of the check-list so inclosed: *provided*, that nothing in this act shall be construed to prevent the clerk of any city from furnishing a copy of a check-list after it has been used in any ward, upon the application of not less than ten legal voters resident therein; and immediately upon such copy being furnished, the check-list shall be again sealed up.

Proviso.

Duty of ward officer when right to vote is challenged.

Ibid. § 44.

68. Whenever in any election the right of any person offering to vote is challenged for any cause recognized by existing laws, it shall be the duty of the warden or presiding officer, if the person challenging shall so demand, to require the person so offering to vote to write his name and residence upon the ballot so offered and challenged, and the warden or presiding officer shall add thereto the name of the person challenging the same, and the cause assigned therefor, before such ballot shall be received; and if such ballot shall be offered sealed, the writing as aforesaid may be upon the envelope covering the same, and the warden or other presiding officer, in the presence of the clerk and at least one inspector, shall mark and designate such ballot by writing thereon the name of the person by whom it is cast before it is counted, and at the close of the election the same shall be returned to the envelope in

which it was deposited: *provided*, that nothing contained in this section shall be so construed as to permit ward officers to receive any vote which, by existing laws, they are required to refuse. 1874, c. 376, § 44.

69. If any city clerk shall wilfully neglect or refuse to comply with any of the requirements of sections 40, 41, 43 and 44 of this act [§§ 60, 61, 67 and 68 of this digest] he shall be punished by a fine not exceeding two hundred dollars. And if any warden or other presiding officer, constable or ward officer as aforesaid, shall wilfully neglect or refuse to comply with the provisions of said sections, he shall be punished by a fine of not less than twenty, or more than two hundred dollars, or by imprisonment in the county jail for a term not exceeding one year. Penalty on city clerk for wilful neglect. Ibid. § 45.

PENALTIES, ETC.

70. Whoever knowing that he is not a qualified voter at an election wilfully votes for any officers to be then chosen, shall forfeit a sum not exceeding one hundred dollars for each offence. Penalty for voting if not qualified. G. S. c. 7, § 28. 9 Met. 268.

71. Whoever in an assembly of people, met for a lawful purpose, at which an alphabetical list of voters is used in voting, votes, or attempts to vote, under any name other than his own, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the jail not exceeding thirty days, on complaint in any court of competent jurisdiction. Penalty for voting under a false name. 1874, c. 344. 111 Mass. 256.

72. Whoever votes, or attempts to vote, upon any name other than his own at any national, state or municipal election, or whoever knowingly gives more than one ballot at one time of balloting at an election, shall be punished by imprisonment in the house of correction for not less than three months nor more than one year. Illegal voting punishable by imprisonment. 1876, c. 172, § 1.

73. If any person shall pay, give or bestow, or directly or indirectly promise, any gift or reward to secure the vote or ballot of any person for any officer to be voted for at any national, state or municipal election, the person so offending, upon conviction before the court having jurisdiction of such offence, shall be punished by a fine of not less than fifty nor more than one thousand dollars, or by imprisonment in the house of correction not less than three months, nor more than one year, or by both, at the discretion of the court. Bribery at elections punishable by fine or imprisonment, or both. Ibid. § 2.

74. Whoever aids and abets any person in the commission of either of the offences described in section one of this act [§ 73] Aiders and abettors punish-

able by fine or imprisonment.
1876, c. 172, § 3.

Penalty for giving false answers.
G. S. c. 7, § 30.
7 Met. 52.

Penalty for attempting to influence voters by bribes or threats.
G. S. c. 7, § 31.

Penalty for aiding unqualified persons to vote.
Ibid. § 32.

Penalty for disorderly conduct.
Ibid. § 33.
16 Mass. 385.

Penalty on town officers for neglect of duty.
Ibid. § 34.

Penalty on clerks.
Ibid. § 35.

Elections in cities.
Ibid. § 36.

Specific provisions contained in city charters to remain in force.
1874, c. 376, § 53.

See § 65.

of this digest] shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the house of correction not exceeding one year.

75. Whoever wilfully gives a false answer to the selectmen or moderator presiding at an election shall forfeit for each offence a sum not exceeding one hundred dollars.

76. Whoever by bribery, or threatening to discharge from his employment, or to reduce the wages of, or by a promise to give employment or higher wages to, a person, attempts to influence a qualified voter to give or withhold his vote in an election, shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail or house of correction for a term not exceeding one year, or both, at the discretion of court.

77. Whoever wilfully aids or abets any one, not legally qualified, in voting or attempting to vote at an election shall forfeit a sum not exceeding fifty dollars for every such offence.

78. Whoever is disorderly in a meeting held for an election mentioned in this chapter shall forfeit a sum not exceeding twenty dollars.

79. If a city or town officer wilfully neglects or refuses to perform the duties required of him respecting elections by the provisions of this chapter, he shall for each offence forfeit a sum not exceeding two hundred dollars.

80. The clerk of any city or town, who fails to make return of the votes given therein in conformity with the provisions of law, shall be liable to a fine of not less than five and not more than fifty dollars.

81. Elections in cities shall be conducted according to the provisions of the acts establishing them, and of the several acts in addition thereto, so far as they are not inconsistent with the provisions of the foregoing sections of chapter seven of the general statutes. If the charter of any city, or any act in amendment of such charter, or otherwise relating to such city, contains any specific and particular provision inconsistent with such of the provisions of chapter 376 of the acts of the year 1874 as apply to cities, such specific and particular provision shall continue in force in such city, anything in this act contained to the contrary notwithstanding.

ELECTION DISTRICTS.

For Representatives to the General Court.

82. The twenty-first article of amendment to the constitution, ratified by the people May 1, 1857, provided, among other things, that the house of representatives shall consist of two hundred and forty members, to be apportioned by the legislature to the several counties of the commonwealth equally, as nearly as may be, according to their relative number of legal voters, as ascertained by the special enumeration made in 1865 and every ten years thereafterwards; and that it shall be the duty of the secretary of the commonwealth to certify as soon as may be, after it is determined by the legislature, the number of representatives to which each county shall be entitled, to the board authorized to divide each county into representative districts. The mayor and aldermen of the city of Boston, the county commissioners of other counties than Suffolk, — or in lieu of the mayor and aldermen of the city of Boston, or of the county commissioners in each county other than Suffolk, such board of special commissioners in each county, to be elected by the people of the county, or of the towns therein, as may for that purpose be provided by law, — shall, on the first Tuesday of August next after each assignment of representatives to each county, assemble at a shire town of their respective counties, and proceed, as soon as may be, to divide the same into representative districts of contiguous territory, so as to apportion the representation assigned to each county equally, as nearly as may be, according to the relative number of legal voters in the several districts of each county; and such districts shall be so formed that no town or ward of a city shall be divided therefor, nor shall any district be made, which shall be entitled to elect more than three representatives.

Provisions of the constitution relating to apportionment of representatives to the general court.
Amend. const. art. 21.
10 Gray, 613.

Every representative, for one year at least next preceding his election, shall have been an inhabitant of the district for which he is chosen, and shall cease to represent such district, when he shall cease to be an inhabitant of the commonwealth. The districts in each county shall be numbered by the board creating the same, and a description of each, with the numbers thereof, and the number of legal voters therein, shall be returned by the board to the secretary of the commonwealth, the county treasurer of each

Amend. const. art. 21.

Amend. const.
art. 21.

Representatives
to the general
court from Suf-
folk county.
1876, c. 15.

Apportionment
of representa-
tives to the gen-
eral court by
the board of
aldermen.
City records,
vol. liv. pp. 892,
937.

county, and to the clerk of every town in each district, to be filed and kept in their respective offices.

83. By an act of the legislature, passed February 21, 1876 (chapter 15), the two hundred and forty members of the house of representatives were apportioned to the several counties in the State, agreeably to the provisions of the constitution, until the next decennial census, the number assigned to Suffolk county being fifty.

On the 1st August, 1876, the following order was passed by the board of aldermen, apportioning the representatives to the general court from Suffolk county as follows:—

Ordered, That for the choice of the fifty representatives apportioned to the county of Suffolk, by chapter fifteen, of the statutes of 1876, the said county be, and it is hereby, divided into twenty-six representative districts, as follows; said districts to be numbered, and to be entitled to the number of representatives, as hereinafter set forth:

FIRST DISTRICT,	comprising Ward No. 1.....	is entitled to	Two Members.
SECOND DISTRICT,	“ Ward No. 2.....	“	Two “
THIRD DISTRICT,	“ Ward No. 3.....	“	Two “
FOURTH DISTRICT,	“ Ward No. 4.....	“	One “
FIFTH DISTRICT,	“ Ward No. 5.....	“	Two “
SIXTH DISTRICT,	“ Ward No. 6.....	“	Two “
SEVENTH DISTRICT,	“ Ward No. 7.....	“	Two “
EIGHTH DISTRICT,	“ Ward No. 8.....	“	Two “
NINTH DISTRICT,	“ Ward No. 9.....	“	Two “
TENTH DISTRICT,	“ Ward No. 10.....	“	Two “
ELEVENTH DISTRICT,	“ Ward No. 11.....	“	Two “
TWELFTH DISTRICT,	“ Ward No. 12.....	“	Two “
THIRTEENTH DISTRICT,	“ Ward No. 13.....	“	Two “
FOURTEENTH DISTRICT,	“ Ward No. 14.....	“	Two “
FIFTEENTH DISTRICT,	“ Ward No. 15.....	“	Two “
SIXTEENTH DISTRICT,	“ Ward No. 16.....	“	Two “
SEVENTEENTH DISTRICT,	“ Ward No. 17.....	“	Two “
EIGHTEENTH DISTRICT,	“ Ward No. 18.....	“	Two “
NINETEENTH DISTRICT,	“ Ward No. 19.....	“	Two “
TWENTIETH DISTRICT,	“ Ward No. 20.....	“	Two “
TWENTY-FIRST DISTRICT,	“ Ward No. 21.....	“	Two “
TWENTY-SECOND DISTRICT,	“ Ward No. 22.....	“	One “
TWENTY-THIRD DISTRICT,	“ Ward No. 23.....	“	Two “
TWENTY-FOURTH DISTRICT,	“ Ward No. 24.....	“	Two “
TWENTY-FIFTH DISTRICT,	“ Ward No. 25.....	“	One “

TWENTY-SIXTH DISTRICT,	“ Chelsea, Rovee and Winthrop “	47 Members
		3 “
		50 “

Ordered, That the place and time of meeting for the clerks of Chelsea, Revere and Winthrop, on the Tuesday succeeding the annual election of representatives, as provided in Chapter 188 of the Acts of 1876, in order to determine the election of representatives from the *Twenty-sixth District* of Suffolk, shall be the City Hall, in Chelsea aforesaid, at 12 o'clock, noon.

FOR STATE SENATORS.

84. By an act passed April 27, 1876, the state was divided, until the next decennial census, into forty districts for the election of senators. The county of Suffolk includes eight of the districts, as follows:—

The city of Chelsea, the towns of Revere and Winthrop, and the wards numbered one and two in the city of Boston, shall constitute a district, to be known as the First Suffolk District.

The wards numbered three, four and five, in the city of Boston, shall constitute a district, to be known as the Second Suffolk District.

The wards numbered six, seven and eight, in the city of Boston, shall constitute a district, to be known as the Third Suffolk District.

The wards numbered nine, ten, eleven and twelve, in the city of Boston, shall constitute a district, to be known as the Fourth Suffolk District.

The wards numbered thirteen, fourteen and fifteen, in the city of Boston, shall constitute a district to be known as the Fifth Suffolk District.

The wards numbered sixteen, seventeen and eighteen, in the city of Boston, shall constitute a district, to be known as the Sixth Suffolk District.

The wards numbered nineteen, twenty and twenty-one, in the city of Boston, shall constitute a district, to be known as the Seventh Suffolk District.

The wards numbered twenty-two,¹ twenty-three, twenty-four and twenty-five, in the city of Boston, shall constitute a district, to be known as the Eighth Suffolk District.

¹ See note on page 5, *ante*. Also "Wards and Ward Officers," *post*, p. 864.

FOR COUNCILLORS.

Council Dis-
tricts.

1876, c. 222, §§ 2,
3, 4.

85. By an act passed April 28, 1876, the state was divided into eight councillor districts,—the second of said districts includes the first Bristol, the first and second Norfolk, the eighth Suffolk and the second Worcester senatorial districts; the third district includes the first and second Suffolk and the first, second and third Middlesex senatorial districts; and the fourth district includes the third, fourth, fifth, sixth and seventh Suffolk senatorial districts.

FOR REPRESENTATIVES TO CONGRESS.

Congressional
districts.
1876, c. 113.

86. By an act passed April 6, 1876, the boundaries of certain districts for the choice of representatives to congress were changed to read as follows:—

District No. 3.

The wards numbered thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-four, in the city of Boston, shall form one district for the choice of a member of congress, to be called congressional district number three.

District No. 4.

The city of Chelsea, the towns of Revere and Winthrop, and the wards numbered one, two, six, seven, eight, nine, ten, eleven and twelve, in the city of Boston, shall form one district for the choice of a member of congress, to be called congressional district number four.

Part of district
No. 5.

The wards numbered three, four and five, in the city of Boston, shall be included within, and form a part of congressional district number five.

Part of district
No. 8.
1876, c. 242.

The wards numbered twenty-two,¹ twenty-three and twenty-five, in the city of Boston, shall be included within, and form a part of congressional district number eight.

ORDINANCE.²

Form of war-
rants for calling
meetings.
Dec. 27, 1826.

SECTION 1. The form of warrants for calling meetings of the citizens of the several wards, shall be as follows, to wit:—

¹ See note on page, 5, *ante*. Also "Wards and ward officers," p. 864.

² An ordinance prescribing the form of warrants and of the service thereof, passed December 27, 1826. See "Charter," § 61.

L. S.

CITY OF BOSTON.

Dec. 27, 1826.

To either of the constables of the city of Boston,
Greeting:

In the name of the commonwealth of Massachusetts
you are hereby required, forthwith, to warn the inhab-
itants of ward No. , qualified as the law directs, to
assemble at on the day of at o'clock,
M., then and there to give in their ballots for

Hereof fail not; and have you there then this warrant
with your doings thereon. Witness chairman of
the board of aldermen of our said city of Boston, the
day of in the year of our Lord

By order of the board of aldermen.

City Clerk.

SECT. 2. All warrants for calling meetings of the
citizens of the several wards, which shall be issued by
the board of aldermen, shall be served by any con-
stable of the city, and returned to the wardens of the
several wards in said city, on or before the time of
meeting of the citizens of said ward therein
specified.

To be served by
constable and
returned.
Ibid.

SECT. 3. The form of warrants for calling meet-
ing of the inhabitants of the said city of Boston shall
be as follows, to wit:

Form of war-
rants for general
meetings.
Ibid.

L. S.

CITY OF BOSTON.

To the constables of the city of Boston, Greet-
ing:

In the name of the Commonwealth of Massachu-
setts, you are hereby required forthwith to warn the

Dec. 27, 1826.

inhabitants of the city of Boston, qualified as the law directs, to assemble at Faneuil Hall, on the day of at o'clock, M., then and there to

Hereof fail not; and have you there then this warrant, with your doings thereon. Witness, chairman of the board of aldermen of our said city of Boston, the day of in the year of our Lord
By order of the board of aldermen.

City Clerk.

To be served by
constables and
returned.
Ibid.

SECT. 4. All warrants which shall be issued by the board of aldermen for calling meetings of the inhabitants of the city shall be served by any constable of the city, and returned to the said board on or before the meeting of the citizens therein specified.

Time of opening
and closing the
poll shall be
fixed by the
board of alder-
men, and in-
serted in the
warrant.
Ibid.

SECT. 5. It shall be the duty of the board of aldermen to fix the time when the poll shall close, as well as the time for the opening thereof, in the election of all officers, and insert the same in any warrant and notification to the inhabitants, of such election.

CITY ENGINEER.

ORDINANCE.¹

Committee on
engineer's de-
partment.
Oct. 12, 1868.

SECTION 1. In the month of January, in each year, there shall be appointed a joint committee of the city

¹ An ordinance relating to the city engineer's department, passed Oct. 12, 1868.

council, to be called the committee on the city engineer's department, to consist of two members of the board of aldermen, and three members of the common council. The said committee shall have the care and supervision of the city engineer's office; and the appointment and discharge of all persons employed therein shall be with their approval; and they shall fix the amount of compensation to be paid to said employes respectively: *provided*, that the same shall not, in the aggregate, exceed the sum appropriated therefor by the city council.

Oct. 12, 1868.

SECT. 2. There shall be chosen, annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a city engineer, who shall be a citizen of Boston. He shall hold his office for one year from the first Monday of April, in the year in which he shall be elected, unless sooner removed; he may be removed at the pleasure of the city council; and vacancies may be filled at any time for the unexpired term. He shall receive such compensation as the city council may from time to time determine.

Choice of city engineer.
Ibid.

SECT. 3. Said engineer shall perform all such services for the city of Boston as properly come under the direction of a civil engineer, and shall be consulted on all important matters relating to public improvements of every kind where the advice of an engineer would be of service. He shall take charge of all such structures and public works of the city as the city council, or any com-

Duties and services.
Ibid.

Oct. 12, 1868.

mittee of the city council, or of either branch, may direct; and under their direction he shall prepare all plans and specifications for such structures, and shall prepare, or cause to be prepared under their direction, all contracts for the same. He shall measure, or cause to be measured, when required by any committee of the city council, or of either branch thereof, all work done by contract for the city, and shall certify to the same. He shall be the custodian of all city plans belonging to his department.

May employ
assistants.
Ibid.

SECT. 4. He may employ such assistants as shall be necessary to perform the services which may be required of him, with the approval of the committee on the city engineer's department, as provided in the first section.

To examine
bridges.
Ibid.

SECT. 5. Said engineer shall make annually, or oftener if required, a careful examination of all the bridges within the city limits, and make such reports respecting their condition as to safety, need of renewal or repairs, as the exigency of the case may require.

Annual report.
Ibid.

SECT. 6. Said engineer shall, annually, in the month of January, present to the city council a report in relation to his department (in addition to the report which he is hereinafter required to make to the Boston water board) showing the number of persons employed, the detailed expenses of the department, the general nature

of the work, the condition of all structures that Oct. 12, 1868.
 come under his supervision,—that are in process
 of construction, or that have been completed during
 the previous year,—and such other general infor-
 mation in relation to the same as he may deem
 expedient.

SECT. 7. Said engineer shall take such charge To have care of
lake and reser-
voirs, etc.
Ibid.
 of the sources for the supply of water and the
 several reservoirs, and all other structures, works,
 and property connected with the water works, as
 the Boston water board may direct; and he shall
 perform all such services in relation to the water
 works as may be required of him by the Boston
 water board or the city council. He shall cause
 accurate observations of the height of the water
 at the sources, the pipe chambers, and the several
 reservoirs, to be made daily, or oftener, at his dis-
 cretion, in order to estimate the daily consumption
 of water in the city.¹

SECT. 8. Said engineer shall, on or before the fifth Report to water
board.
Ibid.
 day of May in each year, present to the said water
 board a report of the general condition of the water
 works, with a detailed statement of all expenditures
 in his department, relating to the same, and such
 other matters as he, or the said board, may deem
 expedient.

¹ See ordinance concerning the care and management of the water works,
post, pp. 935, 938.

FANEUIL HALL.¹ORDINANCE.²

Superintendent
to be appointed
by mayor and
aldermen. His
general duties.
Oct. 14, 1833.
1854, c. 448, § 49.

SECTION 1. There shall be appointed annually on the first Monday of February, or within sixty days thereafter, by the mayor, by and with the advice and consent of the board of aldermen, a superintendent of Faneuil hall, who shall hold his office for one year from the first Monday of April in the year in which he may be appointed, and until his successor is appointed and qualified, or he is removed. He may be removed at the pleasure of the mayor, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation as the city council may from time to time determine. He shall supervise and take proper care of said hall and all the rooms over the same and connected therewith, attend to the admission of visitors, provide that the said rooms are kept clean and in good order, and report to the board of aldermen all repairs that may be necessary in the same.

To examine the
apartments once
a month.
Oct. 14, 1833.

SECT. 2. The said superintendent shall examine at least once in each month, and as much oftener as he may deem expedient, the various apartments, com-

¹ Faneuil hall was originally built by Peter Faneuil, and presented to the inhabitants for a market and town-house. It was commenced September 8, 1740, and completed September 10, 1742; burned January 13, 1761, rebuilt in 1762, and much enlarged in 1805-6. For a full history of "Faneuil hall," and the powers and duties of the board of aldermen in the care and management of said hall, see City Doc. 1851, No. 33, and 1852, No. 48.

² An ordinance providing for the appointment of a superintendent of Faneuil hall, passed October 14, 1833.

prising the armories, offices, and stores connected with said Faneuil Hall, for the purpose of ascertaining any danger that may exist from fire or other causes; and whenever he shall discover any such cause of danger he shall report the same to the board of aldermen.

Oct. 14, 1833.

SECT. 3. The said superintendent shall attend to the opening and closing of said hall, at such hours and under such provisions as the board of aldermen may direct.

To attend to the opening and closing of the hall.
Ibid.

RULES AND REGULATIONS.¹

1. Whenever the hall shall be used for the holding of any meeting, levees, or other purposes, on a petition signed by fifty legal voters, there shall be paid to the superintendent of the hall the following prices, in advance:—

Jan. 26, 1874.

For opening and closing the hall a day, for a convention or for political meetings, twenty dollars.

Fees.

For opening and closing the hall in the evening, for political or other meetings, including lighting and warming, twenty-five dollars.

2. No decorations shall be made in said hall, without a special order from the board of aldermen. Where decorations of any kind are used, the same shall be put up without the use of nails or screws.

Decorations.

¹ Rules and regulations relating to Faneuil hall, passed by the mayor and aldermen January 28 and February 18, 1850, and by the board of aldermen, January 26, 1874.

Police.
Oct. 14, 1838.

3. The police attending any meeting in said hall shall be detailed from those appointed by the mayor and aldermen, and the expense of the same shall be defrayed by the applicants.

Damages.

4. The applicants shall be answerable, jointly and severally, for all damages done to the hall in the occupation of the same.

Superintendent
to account for
fees.

5. The superintendent shall pay monthly, to the city collector, all moneys received by him for the use of the hall, first deducting therefrom the amounts expended by him for the cleaning, gas, etc., for which vouchers shall be exhibited.

FANEUIL-HALL MARKET.

STATUTES.

Mayor and al-
dermen author-
ized to extend
Faneuil-hall
market.
1823, c. 148.

1. By an act of the legislature, passed February 21, 1824, the mayor and aldermen were authorized, whenever the city council should declare that the public exigencies require that the limits of Faneuil-hall market should be extended in any direction between Ann street¹ on the north, a line drawn from the east end of Faneuil hall, on the west, the south side of Faneuil hall, and the lane leading to Green's wharf on the south, and the harbor on the east, to lay out and widen Faneuil-hall market, within one year from the first day of April, 1824, in such direction within the limits aforesaid, not exceeding one hundred and eighty feet wide, as might be prescribed by the city council: *provided*, that the land taken, by virtue of this act, should never be used for any other purposes than those described in said act, without the previous consent of the

Provisions re-
specting dam-
ages for land
taken, etc.

¹ Now called North street.

legislature being obtained therefor. The act contained provisions for referring questions of damages for land taken and buildings removed for the purposes thereof; for petitions to the supreme judicial court for indemnity; the appointment of commissioners by the court; and a trial by jury in case either party should be dissatisfied with the award; with special authority for trustees, administrators, etc., to enter into references and take other measures respecting damages; and provisions securing the proceeds to the persons for whom such estates were held in trust.¹ 1823, c. 148.

2. The city of Boston shall make no by-law, ordinance, or regulation, excluding from the occupation of street stands within the limits of Faneuil-hall market, in said city, as the same are or may be defined in the city ordinances, for the sale of fresh provisions, and perishable produce, any persons taking such stand for the sole purpose of selling such fresh provisions or perishable produce, provided the same are the product of the farm of the person offering them for sale, or of some farm within ten miles of the residence of such person; or are to be sold at wholesale only, by the party offering them for sale on commission, for, or as agent for, some person or persons not residing or having a usual place of business within eight miles of said market; or are meats to be sold at wholesale only by the person who slaughtered the animals of which the same was a part. Provisions and produce may be sold on street stands around Faneuil-hall market under certain restrictions. 1839, c. 211, § 1.

3. The said city shall make no by-law, ordinance, or regulation prohibiting the occupation of stands within said limits, and the sale of fresh provisions and perishable produce, by the persons hereinbefore mentioned, between the hours of four o'clock in the afternoon and the time of closing said market at night, or before eleven o'clock in the forenoon, except on Sunday and holidays. No prohibition by city of Boston during certain hours of the day, except, etc. Ibid. § 2. 1860, c. 152, § 1.

¹ The city council, by resolves passed March 11, 1824, declared that the public exigencies required such extension; and on July 22, 1824, the mayor and aldermen laid out and widened the said market, "in an easterly direction from said Faneuil hall to the harbor, between two lines parallel to the walls of Faneuil hall aforesaid, and running eastwardly towards the harbor, of which the north line shall be fourteen feet distant from the north side of said hall, and the south line shall be one hundred and eighty feet to the south of said north line." — *City Records*, vol. II., pp. 70, 294.

Repeal in part
of former ordi-
nances.

1859, c. 211, § 3.

4. Any existing by-laws, ordinances, or regulations inconsistent herewith are hereby repealed; but this act¹ shall not be construed to repeal or prevent reasonable rules of police, needful for the decorum, convenience, and good order of the market, and of those who buy and sell therein.

Penalty for un-
lawfully killing
woodcock and
partridge.

1870, c. 304, § 1.

1874, c. 77.

5. Whoever, within this commonwealth, takes or kills any woodcock, between the first day of January and the fourth day of July in any year, or any ruffed grouse, commonly called partridge, between the first day of January and the first day of September in any year, or any quail between the fifteenth day of December and the fifteenth day of the next October, or within the respective times aforesaid, sells, buys, has in possession or offers for sale, any of said birds so taken or killed, shall forfeit for every such bird twenty-five dollars.

Pinnated
grouse or heath
hens.

Ibid. § 2.

6. Whoever, at any season of the year, in this commonwealth, within six years from the passage of this act, takes or kills any of the birds called pinnated grouse, or heath hens, or sells, buys or has in possession any of said birds so killed or taken, unless upon grounds owned by him, and grouse placed thereon by said owner, shall forfeit for every such bird twenty-five dollars.

Wood duck,
black duck, and
teal.

Ibid. § 3.

1875, c. 172.

7. Whoever, within this commonwealth, takes or kills any wood or summer duck, between the first day of March and the first day of September in any year, or any black duck or teal between the first day of April and the first day of September, or within the respective times aforesaid, sells, buys, has in possession or offers for sale, any of said birds so taken or killed, shall forfeit for every such bird twenty-five dollars.

Marsh and
beach birds.

1870, c. 304, § 4.

8. Whoever, within this commonwealth, kills any rail, snipe, plover, sandpiper, or any of the so-called marsh, beach or shore birds, between the first day of April and the fifteenth day of July in any year, or within the respective times aforesaid, sells, buys, has in possession or offers for sale any of said birds so killed, shall forfeit for every such offence ten dollars: *provided*, that nothing in this section shall be held to apply to Wilson's snipe, or red-breasted, black-breasted or chicken plover.

Any undomes-
ticated birds ex-

9. Whoever, within this commonwealth, takes or kills, at any season of the year, any undomesticated birds not named in the

¹ Chap. 211, 1859.

preceding sections of this act, except birds of prey, crow blackbirds, crows, herons, bitterns, Canada geese, and such fresh-water or sea-fowl as are not named in section three of this act, or wilfully destroys or disturbs the nests or eggs of any undomesticated birds, except the nests and eggs of birds of prey, crow blackbirds or crows, shall forfeit for every such offence ten dollars: *provided*, that any person may, during the months of September, October and November, take or kill wild pigeons, or, having first obtained the written consent of the mayor and aldermen of any city, or the selectmen of any town, may take the nest and eggs, or at any season of the year kill any undomesticated birds for the purpose of preserving them as specimens in cabinets of natural history, or for any scientific purpose whatever.

cept birds of prey, etc.
1870, c. 304, § 5.

Proviso.

10. Whoever, at any season of the year, takes, kills, or destroys any game birds by means of traps, snares, nets or springs; or shoots at or kills any water fowl, by the use of any battery, swivel, or pivot gun, shall forfeit for every such offence twenty-five dollars: *provided*, that between the first day of October and the first day of January in any year, any person may, on his own premises, or for his own personal use and not for sale, take or kill by means of traps or snares any of the birds known as ruffed grouse or partridge.

For snaring birds, or killing with battery or swivel.
Ibid. § 6.

Proviso.

11. Whoever, between the first day of December in any year and the first day of October following, takes or kills any deer except his own tame deer kept on his own grounds, shall forfeit for every such offence one hundred dollars.

Deer not to be killed except, etc.
Ibid. § 7.

12. All prosecutions under the provisions of this act shall be commenced within sixty days from the time the alleged offence is committed; and the possession by any person of any deer, or of birds mentioned as protected in this act, during the time within which the taking or killing of the same is prohibited, shall be *prima facie* evidence to convict under this act.

Prosecutions to be commenced within sixty days from time offence is committed.
Ibid. § 8.
1874, c. 77.

13. The state constabulary, the mayor and aldermen, and selectmen of the several cities and towns of this commonwealth shall cause the provisions of the preceding sections to be enforced in their respective places; and all forfeitures accruing under these sections shall be paid, one-half to the informant or prosecutor, and one-half to the city or town where the offence is committed.

State constabulary and municipal authorities to enforce law.
Ibid. § 9.
1870, c. 304, § 9.

Young lobsters
not to be sold.
1874, c. 110, § 1.

14. Whoever sells, or offers for sale, or has in his possession with intent to sell, either directly or indirectly, any lobster less than ten and one half inches in length, measuring from one extreme of the body to the other, exclusive of claws or feelers, shall forfeit for every such lobster five dollars.

Disposition of
forfeitures.
Ibid. § 2.

15. All forfeitures accruing under this act shall be paid one-half to the person making the complaint and one-half to the city or town where the offence is committed.

Time for catch-
ing smelts.
1874, c. 153, § 1.

16. Whoever, within this commonwealth, offers for sale or has in his possession any smelt or smelts between the fifteenth day of March and the first day of June in each year, shall forfeit for each and every smelt so sold, offered for sale, or had in his possession, the sum of one dollar.

City authorities
to enforce pro-
visions.
Ibid. § 2.

17. The mayor and aldermen of any city, the selectmen of any town, and all police officers and constables within this commonwealth, shall cause the provisions of this act to be enforced within their respective cities and towns, and all forfeitures and penalties for violations of the provisions of this act shall be paid, one-half to the person making the complaint and one-half to the city or town in which the offence is committed.¹

ORDINANCES.²

Superintendent
of Faneuil-hall
market ap-
pointed, etc.
June 3, 1859.

SECTION 1. The mayor and aldermen shall annually, on the first Monday of February, or within sixty days thereafter, appoint a superintendent of Faneuil-hall market, who shall hold his office for one year from the first Monday of April in the year in which

¹ For penalties for sale of meat of young calves, tainted or damaged fish, and for adulteration of food and drugs, see "Health," p. 394.

² An ordinance in relation to Faneuil-hall market, passed June 3, 1859; amended May 18, 1866; published in *Journal and Traveller* June 6, 1866; an ordinance to amend an ordinance in relation to Faneuil-hall market, passed June 2, 1871; published for two weeks, from June 6, 1871, in all the daily papers of Boston. Also an ordinance to amend an ordinance in relation to Faneuil-hall market, passed July 25, 1872; published in all the daily papers July 27-29, for two weeks.

he shall be appointed, and until his successor is chosen and qualified, or he is removed. He may be removed at the pleasure of the mayor, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation for his services as the city council shall from time to time determine. June 3, 1859.

SECT. 2. The superintendent of Faneuil-hall market may, whenever authorized by the board of aldermen, employ one or more deputies, who shall be approved by the mayor, and who shall have power and authority to assist the superintendent in the execution of his office, and on any occasion, when said superintendent is not present, to officiate for him in his stead, and to perform his duties; but no deputy shall remain in office longer than during the approbation of the mayor, and the said superintendent shall be responsible for the conduct of each of his deputies, and such deputies shall receive such compensation for their services as the city council shall annually direct. The mayor and aldermen may invest the superintendent and his deputies with police powers. His deputies,
their appoint-
ment and duties.
Ibid.

SECT. 3. The superintendent of Faneuil-hall market and his deputies shall, under the control of the board of aldermen, have the care and superintendence of said market; and it shall be their duty to preserve order in said market; to execute and carry into effect all the regulations, orders, and ordinances which may be duly made and established from time to time by the city council or the board of aldermen for the due regulation of the same; and to keep open at all hours of every Duties of super-
intendent, etc.
Ibid.
9 Met. 253.

June 3, 1859.

market day, after the hour of eight o'clock, A. M., the south part of South Market street, through the entire length of said street, to the width of thirty-five feet from the outside limits of the sidewalk of said South Market street. This space shall be kept open and unobstructed for the passage of vehicles; and it shall be the duty of the superintendent and his deputies to enter and prosecute complaints for any violations of said regulations, orders and ordinances.

Limits of Faneuil-hall market defined.
May 18, 1866.

SECT. 4. The limits of Faneuil-hall market shall include the lower floor, porches, and cellars of the building called Faneuil-hall market; the basement story and cellars under Faneuil hall, and the following-described portions of the adjacent streets, viz.: so much of Commercial street as lies westerly of the sidewalk on the easterly side thereof, and between the outer lines of the sidewalks on the northerly side of North Market street and the southerly side of South Market street extended eastwardly; all of North and South Market streets, except the northerly sidewalk of the former, and the southerly sidewalk of the latter; all that portion of Merchants' row included between the outer lines of the aforesaid northerly and southerly sidewalks extended westwardly across said Merchants' row, and all of Faneuil-hall square, except the sidewalks on the northerly, southerly, and westerly sides thereof, — the above-described limits being delineated on a plan made by N. Henry Crafts, city engineer, dated March twelfth, eighteen hundred and sixty-six.

SECT. 5. The said superintendent and his deputies, Superintendent to assign stands for carts or other carriages. June 3, 1859. 11 Pick. 168. under the direction of the board of aldermen, shall have the control of all carts, wagons, sleighs, and other vehicles and carriages within the limits of Faneuil-hall market, and may assign stands within the limits of the said market for the sale of provisions and other articles; and no person shall occupy any stand other than such as may be assigned him.

SECT. 6. The said superintendent and his deputies Superintendent or deputies may order carriages, etc., horses, etc., to be removed, or cause them to be removed. Ibid. shall have power and authority to remove from place to place within the limits (if the owners or possessors thereof neglect or refuse after being requested so to remove them, or if the owner or possessor be absent therefrom), all such carts, wagons, sleighs, carriages, and vehicles, with their contents, and all horses and other beasts as shall be ranged or formed in any other manner as directed by said superintendent or either of his deputies; and the owner or person having charge of any cart, wagon, sleigh, carriage, or other vehicle, or any box, barrel, cask, crate, basket, package, tub, or other vessel, whether empty or not, occupying any place within the limits of said market, shall, when directed by said superintendent or either of his deputies, remove the same with their contents, or cause the same with their contents to be removed without delay, to such place within the limits of the said market as the said superintendent or either of his deputies may direct; and in case of neglect or refusal so to do by such owner, or possessor, or in case of their absence, so that the direction to remove cannot be given by said superintendent or either of his

June 3, 1859.

deputies and immediately complied with, the owner or possessor thereof shall be liable to the penalty hereinafter mentioned for violation of this ordinance.

Horses, etc., to
be taken from
carriages, etc.,
by owner, or
superintendent
may remove
them.
Ibid.

SECT. 7. All horses and other beasts shall be taken from the carts, wagons, sleighs, carriages, and other vehicles having provisions or articles of any kind for sale therein, while standing within the limits aforesaid; and the same shall be conducted to a stable, or otherwise removed from said limits, by the owner or driver having charge of the same; and it shall be lawful for the said superintendent or either of his deputies, whenever he, or either of them, shall find any cart, wagon, sleigh, carriage, or other vehicle, or any ox, horse, or other beast standing or being within the said limits, abandoned and left unprotected, or found within the limits of the market on any part of the Lord's day or evening, to cause such cart, wagon, sleigh, carriage, or other vehicle, with its contents, and such ox, horse, or other beast, to be conducted to some stable or other suitable place; and the owner or person having the care or keeping thereof shall be liable to pay, before the redelivery thereof to him, the entire cost and expense of the removal and keeping thereof during the time it shall be in said stable, or other suitable place, together with such further sum of money to the city, not exceeding two dollars, for the trouble arising in that behalf, as the said superintendent, or either of his deputies, shall demand, the same to be paid to and accounted for by said superintendent or his deputies to the city.

SECT. 8. All the butter brought within the limits of said market for sale, shall be sold by weight; and if it is in lumps, each lump shall contain one or more even or integral pounds', half or quarter pounds', weight; and the superintendent and his deputies shall have power and authority to take and weigh all butter in lumps so exposed for sale in said market, and, if found deficient in weight, to destroy the form of said lumps.

Butter to be sold
by weight.
June 3, 1859.

SECT. 9. If any person shall, within the limits of said market, sell, or offer to sell, or exhibit for sale, any article which shall be deficient in the weight or measure for which he sells the same, or offers or exhibits the same for sale, or shall practise any fraudulent dealing within said limits, and shall be convicted thereof, he shall be liable to the penalty provided in the twentieth section of this ordinance.

Fraudulent
dealing or
breach of this
ordinance, how
punished.
Ibid.

SECT. 10. The several stalls and cellars in said market shall be leased to the respective occupants by written leases, the conditions of which shall be prescribed by the board of aldermen;¹ and the rent

Stalls to be
leased by writ-
ten leases.
Ibid.

¹ The following conditions, prescribed from time to time by the board of aldermen, are now in force, and are incorporated in each lease:—

1. That the lessee shall obey all the provisions of the city ordinances, and orders of the board of aldermen, relating to the market.

2. That the several stalls or cellars shall be kept in repair at the expense of the lessee.

3. That the lessee shall not place, or suffer to be placed, any box, cask, or other articles in the passage-way before his stall or cellar, or within it so as to project into any part of the passage-way, or in the cross passage-way, unless by consent of the superintendent of the market.

June 3, 1859.

Shall not be
underlet.

thereof shall be paid to the said superintendent of the market, or to such person as the board of aldermen may appoint, and at such time as the board of aldermen may determine; and such lessees shall not underlet the same, or any part of said stalls or cellars, nor permit the same or any part thereof to be occupied by any other person without the assent of the board of aldermen, under the penalty of forfeiting the right to their respective cellars, stalls, and leases.

Offal, etc., not
to be thrown, or
remain in the
stalls, etc.
Ibid.

SECT. 11. The said lessees shall not throw, or permit to be thrown, or to remain within the precincts of their respective stalls or cellars, any offal, animal substance, scrapings, or any kind of dirt, filth, useless or offensive matter, but shall forthwith remove the same, or cause the same to be deposited

4. That the lessee shall not smoke, nor have in his possession any lighted pipe or cigar, within the limits of the market, nor shall he suffer or allow any other person to smoke upon his premises in the market.

5. Said stall or cellar shall not be underlet to any person by said lessee, or be occupied by any person except said lessee, without the assent of the board of aldermen previously obtained.

6. Said lessee shall not throw, or permit to be thrown, or to remain within the precincts of his stall or cellar, any offal, animal substance, scrapings, or any kind of dirt, filth, or useless matter, but shall forthwith remove the same, or cause the same to be deposited in some tight vessel, to be approved by the superintendent of the market; and to be removed by said lessee, as the superintendent or either of his deputies shall direct.

7. When the lessee of any stall or occupant of any cellar in said market house shall from any cause whatever vacate the same, or shall receive notice from the board of aldermen to vacate the same, or shall neglect or refuse to pay his rent for the space of twenty-four hours, or shall neglect or refuse to comply with any regulations established for the good order and cleanliness of the said market house, and its entries, passageways, sidewalks, and the streets adjoining said house, the stall or stalls and cellar or cellars of such lessee shall thereupon revert to the city, and be at the disposal of the board of aldermen.

in some tight vessel, to be approved of by the said June 3, 1859. superintendent or either of his deputies, and to be removed by said lessees as the said superintendent, or either of his deputies, may direct.

SECT. 12. No person shall throw or sweep any offal, animal or vegetable substance, scrapings or sweepings, damaged salt, brine, or pickle, or foul water from the stalls or cellars into the passage-ways, or on the sidewalks, or into the streets adjoining said market-house, at any time during the day or night. Nor shall any person within the limits of said market, sell, or offer to sell, or expose for sale, or have in his possession any meat, fish, bread, vegetables, tallow, skins, pelts, poultry, or other articles which, in the

Offal, etc., not to be thrown into the passage-ways or on sidewalks. Ibid.

Stale meat, vegetables, etc., not to be sold or exposed. G. S. c. 166, §§ 1, 2. See "Health," post.

8. The market house to be closed on Washington's birthday (22d of February), and on Christmas day; also, on the day of the celebration of the Declaration of Independence, unless said occasion occurs on Saturday or on Monday, when said market shall be closed at nine o'clock, A.M.; said market shall also be closed on the Seventeenth of June at nine o'clock, A. M.; and on other week days, from the twenty-fifth of October to the first of June, the market house shall be closed at five of the clock, post meridian; and from the first of June to the first of October, at half-past five of the clock, post-meridian.

9. That the rent shall be paid monthly to the superintendent of the market, unless otherwise provided by indorsement on the lease.

10. The lessee shall not employ any person within the limits of Faneuil-hall market who shall be objectionable to the market committee.

11. In case of the insolvency of the occupant of any stall or cellar before his term expires, the lease shall revert immediately to the city, and shall be subject to the disposition of the market committee for the remainder of the term.

12. No stall shall be occupied by more than one individual, unless the same shall be occupied by such parties as *co-partners*.

13. Said lessee shall pay all water rates for the use of the Cochituate water as shall be assessed upon therefor by the water registrar.

14. In case of any violation of the preceding conditions, the lessee shall be subject to a forfeiture of his stall or cellar and of his lease.

June 3, 1859.

Superintendent,
etc., may re-
move it, etc.

Penalty.

Stalls, etc., shall
revert to the city
when rent is not
paid, or regula-
tions are not
complied with.
Ibid.

opinion of said superintendent, or either of his deputies, shall be diseased, corrupted, tainted, or unwholesome; but such person shall, when directed by said superintendent, or either of his deputies, forthwith remove all such articles from said limits to such suitable place as the said superintendent or either of his deputies may order; and if such person shall refuse or neglect to comply with such direction, or if the owner or person having charge of such articles be absent for more than one hour's time, the said superintendent or either of his deputies shall forthwith remove the same, or cause the same to be removed from said limits to such suitable place as aforesaid, at the expense of such person; and if, in the judgment of said superintendent, or either of his deputies, it may be necessary for the public health, it shall be their duty to destroy the same; and if any person shall hinder, obstruct, or molest said superintendent or any of his deputies, or any person employed by either of them, in the premises he shall be liable to the penalty provided in the twentieth section of this ordinance.

SECT. 13. When the lessee of any stall or of any cellar in said market-house shall, from any cause whatever, vacate the same, or shall receive notice from the board of aldermen to vacate the same, or shall neglect or refuse to pay his rent for the space of twenty-four hours, or shall neglect or refuse to comply with any regulations established for the good order and cleanliness of the said market-house and its entries, passage-ways, sidewalks, and the streets

adjoining said house, the stall or stalls and cellar of such lessee shall thereupon revert to the city, and be at the disposal of the board of aldermen. June 3, 1859.

SECT. 14. No poultry shall be sold or offered for sale in said market until the same has been properly dressed, by removing the heads, crops, entrails, and feathers. Poultry shall be dressed, etc. Ibid.

SECT. 15. No person shall, within the limits of Faneuil-hall market, play at any game, or lie down, or sleep, or behave in a disorderly, noisy, or riotous manner, or scuffle, or throw any missile or thing whatsoever; nor shall any person, within the limits of said market, smoke, or have in his possession, any lighted pipe or cigar; nor shall any idle or disorderly person, itinerant peddler, or transient person, making disturbance or noise, be allowed to frequent or tarry within the limits of said market, after being forbidden so to do by the superintendent or his deputy; and every person offending against the provisions of this section shall be liable, for each offence, to the penalties prescribed in the twenty-third section of this ordinance. Gaming, smoking, disorderly behavior prohibited. Ibid. Penalty.

SECT. 16. No horse or other beast, and no cart, wagon, carriage, sleigh, or other vehicle, shall be permitted to stand within the limits of said market on any part of the Lord's day or evening, nor shall any person continue to do any business within the limits of said market on any week-day after the hour prescribed for closing the market (except on Horses, carriages, etc., not permitted within limits of the market, except, etc. Ibid.

June 3, 1859.

the evenings immediately preceding Thanksgiving and Christmas days); nor on any evening after the closing of the market-house; and if any person shall place or leave any wagon, cart, carriage, sleigh, or other vehicle, box, barrel, crate, cask, or other vessel, empty or otherwise, within the limits of said market, on any part of the Lord's day or evening, or on any week-day after the said hour for closing the market, except on the evening immediately preceding Thanksgiving and Christmas days, or on any evening after the closing of the market-house, he shall forfeit a penalty not exceeding fifty dollars; and the said superintendent, or either of his deputies, may cause the same to be removed in the manner provided in the sixth and seventh sections of this ordinance, or either of them.

Penalty.

Superintendent
may remove
horses, etc.

Passage-ways,
etc., shall not be
incumbered.
Ibid.

SECT. 17. Lessees of stalls and occupants of stands shall not incumber the main passage-way or cross passage-ways within the said market-house, nor the passage-ways outside of said house, in front of the door-ways and leading into the middle of the streets, nor any of the avenues leading to and from the said market, with any casks, barrels, meat, or other articles or incumbrances.

Street stands
shall not be oc-
cupied, except,
etc.
Ibid.
9 Met. 253.

SECT. 18. No person shall occupy a street stand within the limits of the said market, unless for the sole purpose of selling fresh provisions or perishable produce, the product of the farm of the person offering them for sale, or of some farm within ten miles of the residence of such person; or for the purpose

of offering the same for sale at wholesale, on com-
 mission for, or as agent of, some person or persons
 not residing or having a usual place of business
 within eight miles of said market; and meats shall
 be sold at wholesale only by the person who
 slaughtered the animals of which the same were
 a part.

SECT. 19. Any person occupying a street stand, or
 any place within the limits of the said market, for the
 sale of fresh provisions, or perishable produce, or
 having in his possession fresh provisions or perish-
 able produce, with intent to sell the same within said
 limits, between the hours of eleven o'clock in the fore-
 noon and four o'clock in the afternoon, or between the
 hour of closing the said market at night and the
 morning of the next day, unless permitted so to do
 by the superintendent or his deputy, shall be liable to
 the penalty hereinafter mentioned for a violation of
 this ordinance.

Street stands,
 what hours to
 be occupied.
 June 2, 1871.

SECT. 20. No person having the care or ordering
 of any vehicle shall place the same, or allow the same
 to be, abreast of, or in a line with, or near to any
 other vehicle or vehicles standing in any street in such
 a manner as to obstruct a free passage for other vehi-
 cles, under a penalty of not less than five dollars nor
 more than twenty dollars for each offence.

Vehicles, how
 to be placed in
 market limits.
 July 25, 1872.

This section shall not apply to the vehicles of
 market or provision men, standing within the limits
 of Faneuil-hall market with fresh provisions or per-
 ishable produce for sale before eleven o'clock in the

July 25, 1872.

forenoon, or after four o'clock in the afternoon, until the closing of said market at night; but this section shall apply to all vehicles being within the limits of Faneuil-hall market between eleven o'clock in the forenoon and four o'clock in the afternoon.

Length of time
to stand in
streets.
Ibid.

SECT. 21. No owner, driver, or other person having the care or ordering of any market wagon or other vehicle having fresh provisions or perishable produce therein, shall occupy a street stand or place, in any street within the limits of Faneuil-hall market, more than twenty minutes between the hours of eleven o'clock in the forenoon and four o'clock in the afternoon, unless permitted so to do by the superintendent of said market or his deputy;¹ and any person offending against the provisions of this section shall forfeit and pay a sum not less than five dollars nor more than fifty dollars for each offence, to be recovered on complaint before the municipal court of the city of Boston.

June 2, 1871.

SECT. 22. No owner, driver, or other person having the care or ordering of any market wagon or

¹A city ordinance forbidding that wagons containing perishable produce shall be suffered to remain in streets, within the limits of a market, more than twenty minutes, between the hours of eleven in the morning and four in the afternoon, unless permitted to do so by the superintendent of the market, is not void as being unreasonable, unequal or unconstitutional, or unduly restraining trade. 109 Mass. 355.

The right of the city of Boston to pass ordinances, forbidding that provision wagons shall be suffered to stand in streets within the limits of a market, is not affected by the St. of 1869, c. 301, § 1, which authorizes the mayor and aldermen of any city to make rules in regard to the passing of vehicles in the streets. Ibid.

other vehicle, having fresh provisions or perishable produce therein, shall suffer the same to remain within the limits of Faneuil-hall market more than twenty minutes, between the hours of eleven o'clock in the forenoon and four o'clock in the afternoon, unless permitted so to do by the superintendent or his deputy, and any person offending against the provisions of this section shall be liable, for each offence, to the penalty prescribed in the twenty-third section of this ordinance.¹ June 2, 1871.

SECT. 23. Every person offending against any of the provisions of this ordinance, except as otherwise specially provided in any section thereof, shall forfeit and pay a sum not less than two dollars, nor more than fifty dollars for each offence, to be recovered on complaint before the municipal court of the city of Boston. Penalties.
June 3, 1859.

SECT. 24. The said superintendent shall pay over all moneys by him received to the city collector as soon as received by him, and shall make a quarterly report to the board of aldermen of all sums so received and paid over. Superintendent
shall pay over
moneys.

¹ This section was published for two weeks from June 6, 1871, in all the daily papers of Boston.

FENCES AND FENCE VIEWERS.

STATUTES.

What shall be a legal fence.

G. S. c. 25, § 1.
98 Mass. 560.

Adjoining occupants to maintain fences.

Ibid. § 2.
2 Met. 180.
4 Met. 589.
4 Gray, 220.
108 Mass. 175.

Proceedings when a party neglects, etc.

G. S. c. 25, § 3.
14 Pick. 276.
11 Met. 496.
6 Allen, 437.

Remedy against adjoining

owner, etc., for repairing, etc., deficient fence.

G. S. c. 25, § 4.
6 Mass. 95.
5 Pick. 503.
14 Pick. 276.
6 Allen, 437.

Controversies between parties about repairing, etc., how determined.

G. S. c. 25, § 5.
11 Met. 496.
11 Cush. 450.

1. Fences four feet high and in good repair, consisting of rails, timber, boards, or stone, and brooks, rivers, ponds, creeks, ditches, and hedges, or other things which the fence viewers within whose jurisdiction the same shall lie shall consider equivalent thereto, shall be deemed legal and sufficient fences.

2. The respective occupants of lands enclosed with fences shall, so long as both parties improve the same, keep up and maintain partition fences between their own and the next adjoining enclosures, in equal shares.

3. If a party refuses or neglects to repair or rebuild a partition fence which he ought to maintain, the aggrieved party may complain to two or more fence viewers of the place, who, after due notice to each party, shall survey the same, and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant, and direct him to repair or rebuild the same within such time as they judge reasonable, not exceeding fifteen days; and if the fence shall not be repaired or rebuilt accordingly, the complainant may make or repair the same.

4. When a deficient fence, built up or repaired by a complainant as provided in the preceding section is, after due notice to each party, adjudged sufficient by two or more of the fence viewers, and the value thereof with their fees ascertained by a certificate under their hands, the complainant may demand, either of the occupant or owner of the land where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the same so due, for one month after demand, he may recover the same, with interest at one per cent. a month, in an action of contract.

5. When a controversy arises about the rights of the respective occupants in partition fences and their obligation to maintain the same, either party may apply to two or more fence viewers of the places where the lands lie, who, after due notice to each party, may, in writing, assign to each his share thereof, and direct the

time within which each party shall erect or repair his share, in the manner before provided; which assignment, being recorded in the city or town clerk's office; shall be binding upon the parties and upon the succeeding occupants of the lands; who shall thereafter maintain their respective parts of said fence. G. S. c. 25, § 5.

6. If a party refuses or neglects to erect and maintain the part of a fence assigned to him by the fence viewers, the same may in the manner before provided be erected and maintained by any aggrieved party; and he shall be entitled to double the value thereof ascertained and recovered in the manner aforesaid. Double damages in case, etc., Ibid. § 6. 11 Met. 496.

7. When in a controversy between adjoining occupants as to their respective rights in a partition fence, it appears to the fence viewers that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay the value of so much thereof as may be assigned to him to repair or maintain, to be ascertained and recovered as provided in this chapter.¹ Fence viewers may order compensation for repairing more than just share. Ibid. § 7. 14 Pick. 276. 11 Met. 496.

8. Partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise agree. Partition fences, how kept. G. S. c. 25, § 8.

9. When lands of different persons which are required to be fenced are bounded upon or divided from each other by a river, brook, pond, or creek, if the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side in making a partition fence on the one side or the other, or shall disagree respecting the same, then two or more fence viewers of the place or places wherein such lands lie, on application made to them, shall forthwith view such river, brook, pond, or creek; and if they determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence on the true boundary line without unreasonable expense, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on the one side and partly on the other side, as to them shall appear just, and shall reduce their determination to writing; and if either of the parties refuses or neglects to make Partition fences, how and where made when lands are bounded by water. Ibid. § 9. 11 Met. 496.

¹ Gen. Stat. c. 25, to be found in the text.

G. S. c. 25, § 9. and maintain his part of the fence according to the determination of the fence viewers, the same may be made and maintained as before provided, and the delinquent party shall be subject to the same costs and charges, to be recovered in like manner.

Where lands have been improved without partition fences, division may be made.

Ibid. § 10.

10. When lands belonging to two persons in severalty have been occupied in common without a partition fence between them, and one of the occupants desires to occupy his part in severalty, and the other occupant refuses or neglects on demand to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may have the same divided and assigned by two or more fence viewers of the same place, in the manner provided in this chapter; and the fence viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making the fence; and if the occupant complained of does not make his part of the fence within the time so assigned, the other party may, after having made up his part of the fence, make up the part of the other, and recover therefor double the expense thereof, together with the fees of the fence viewers, in the manner provided in the other sections.

See §§ 11, 19.

Fence viewers may determine whether fence is required; may employ a surveyor; line fixed to be considered the true line till decided by court.
1863, c. 190, § 1.
1870, c. 376.

11. Fence viewers, when called to act under the provisions of chapter twenty-five of the General Statutes, shall have power to determine whether a partition fence is required between the lands of the respective occupants, and may, when the division line between their lands is in dispute, or unknown, designate a line on which the fence shall be built, and may employ a surveyor therefor, if necessary; and such line shall, for the purpose of maintaining a fence, be deemed the division line between such lands, until it shall be determined by judicial proceedings, or otherwise, that the true line is in another place, and until so determined, all provisions of law relating to the erection, maintenance, and protection of fences, shall be applicable to the fence erected, or to be erected, on such line.

If line is altered by court, fence viewers may order removal of fence to the new line; fees and expenses, how recovered.

12. If, after a fence has been made upon a line thus designated, it shall be determined by judicial proceedings, or otherwise, that the true division line is in another place, each occupant shall remove his part of the fence to, and rebuild the same on, such line; and in case of neglect or refusal by either party to

remove and rebuild his share thereof, the other may apply to two or more fence viewers, who, upon such application, shall view the premises and assign a time within which the fence shall be removed and rebuilt, and give the delinquent party notice thereof; and if such party does not remove and rebuild the fence within the time so assigned, the other party may remove and rebuild the same, and recover double the expense therefor, together with the fees of the fence viewers, to be ascertained and recovered in the manner provided in section four [§ 19 of this digest].

13. Where a division of fence between the owners of improved lands has been made either by fence viewers or under an agreement in writing between the parties, recorded in the office of the clerk of the city or town, the several owners of such lands, and their heirs and assigns, shall erect and support said fences agreeably to such division; but if a person lays his lands common and determines not to improve any part of the same adjoining the fence divided as aforesaid, and gives six months' notice of his determination to all the adjoining occupants of lands, he shall not be required to keep up or support said fence during the time that his lands lie common and unimproved.

Fences to be maintained by agreement of parties or assignment of fence viewers. Lands may be laid common by giving notice. G. S. c. 25, § 11. 1 Cush. 15.

14. When one party ceases to improve his land or lays open his enclosure, he shall not take away any part of the partition fence belonging to him and adjoining to the next enclosure: *provided*, the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers in writing determine to be the reasonable value thereof.

When one party lays open enclosed land, the other may purchase right in fence. Ibid. § 12.

15. When land which has lain unenclosed is afterwards enclosed or used for depasturing, the occupant or owner thereof shall pay for one half of each partition fence standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof to be ascertained in writing (in case they do not agree between themselves) by two or more of the fence viewers of the same place wherein such partition fence stands; and if such occupant or owner, after the value has been so ascertained, neglects or refuses, for thirty days after demand made, to pay for one-half of the partition fence, the proprietor of the fence may maintain an action of contract for such value, and the costs of ascertaining the same; but the occupant or owner of un-

Where unimproved lands are enclosed, etc., party benefited shall pay, etc. Ibid. § 13. 1 Cush. 11.

G. S. c. 25, § 13. enclosed land on the island of Nantucket, used for depasturing only, shall not be subject to the foregoing provisions of this section.

Fence viewer,
when fences are
on town lines.
Ibid. § 14. 16. Where the line upon which a partition fence is to be made or divided is the boundary line of one or more cities or towns, or partly in one and partly in another, a fence viewer shall be taken from each place.

Water fences,
how made.
Ibid. § 15.
11 Met. 496. 17. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share to him belonging, similar proceedings shall be had as in other cases of the like kind respecting other fences before mentioned.

Penalty upon
fence viewers
for neglect of
duty.
G. S. c. 18, § 31.
G. S. c. 25, § 16. 18. Two or more fence viewers shall be chosen annually; and any fence viewer duly chosen and sworn who, when requested, unreasonably neglects to view a fence, or to perform any other duties required of him in the preceding sections, shall forfeit five dollars, to be recovered by action of tort to the use of the place, or on complaint to the use of the commonwealth, and he shall also be liable for all damages to the party injured.

Fees of fence
viewers, by
whom to be
paid. How re-
covered.
Ibid. § 17.
1862, c. 93, § 1. 19. Each fence viewer shall be paid at the rate of two dollars a day for the time he is so employed by all or by such of the parties in dispute, and in such proportions as shall be determined by a certificate in writing, under the hands of the fence viewers, acting in each case; and if any person or persons so required to pay the whole or any portion of said fees, shall neglect to pay the fence viewers within thirty days after the certificate has been delivered, the fence viewers may recover, in an action of tort, double the amount of the fees due from such delinquent party.

FERRIES.¹

STATUTES.

CHELSEA FERRY.

1. The Winnisimmet Company, incorporated in 1833, was empowered to purchase and hold any ferry or ferry rights between Boston and Chelsea; and to construct and maintain wharves and other works suitable and convenient for steamboats and other vessels that may be used on any such ferry; but it was not authorized to build any bridge or dam over the channel of any public navigable waters, or otherwise permanently to obstruct the same. A penalty of not less than twenty dollars and not over one hundred dollars was imposed upon any person obstructing the passage of the boats, or wilfully injuring the property of the corporation. Nothing in the act was "in any way to affect the power of the legislature to grant such other ferries as they lawfully might if this act had not been passed, nor to limit or affect in any way the right of the legislature to fix, regulate, and at their pleasure to change the rates of toll at any ferry owned or conducted by said corporation, or to authorize any other tribunal to do the same."

Winnisimmet company authorized to establish a ferry between Boston and Chelsea. 1833, c. 197.

2. By the statutes of 1837, chapter 211, the Winnisimmet Company was authorized to extend its wharves, dock, and landing-place, situated near the foot of Hanover street, Boston, into and over the tide waters of the harbor, with the right to use and occupy the flats within or adjoining the said wharves and structures when so extended; such wharves and structures not to extend beyond the commissioners' line, and not to be built otherwise than on piles within two hundred and twenty-five feet of said line. The act of 1846, chapter 166, authorized the company to extend its wharves and docks for the reception of the ferry-boats at Chelsea, over the tide waters in the harbor, not exceeding sixty feet from the end of their wharves as there existing, by driving piles in front of said wharves, with the right to use and occupy the flats adjoining for the purposes of the ferry.

The Winnisimmet company may extend its wharves, etc., in Boston and Chelsea. 1837, c. 211.

1846, c. 166.

¹ For general provisions in relation to the establishment and maintenance of ferries, see Gen. Sts. c. 47.

EAST BOSTON FERRIES.¹

East Boston
Ferry company
incorporated.
1852, c. 244, § 1.

City authorized
to purchase
franchise, etc.
Ibid. § 9.

May issue scrip
to pay for the
same.
Ibid. § 10.

3. By chapter two hundred and forty-four of the acts of the year 1852, the East Boston Ferry Company was incorporated for the purpose of establishing and supporting a ferry between the main land in the city of Boston and the island of East Boston. The city was authorized at any time during the continuance of the charter to purchase of said company the franchise and property owned by them, paying therefor such a sum as would reimburse them the amount of capital paid in, with a net profit thereon, as might be agreed upon, not exceeding ten per cent. per annum from the time of the payment thereof by the stockholders to the time of such purchase.

4. ² For the purpose of making the purchase aforesaid, the act further provided that "the city council of the city of Boston shall have authority to issue, from time to time, notes, scrip, or certificates of debt, to be denominated on the face thereof 'Boston Ferry Scrip,' to an amount not exceeding in the whole the sum of

¹ For some account of ferries between East Boston and the city proper, previous to 1852, see City Doc. 24, 1866. The People's Ferry Company was chartered in 1853 (chap. 422). In March, 1859, it conveyed all its property, except its boats and franchise, to the city for \$125,000. Early in 1864 the boats on this line were withdrawn and sold, and the property purchased by the city in 1859 was taken possession of by the committee on public buildings.

The Citizens' Ferry Company was incorporated by chap. 213, of the acts of the year 1866. After the passage of the act, however, the corporators purchased a controlling interest in the stock of the East Boston Ferry Company; and, as they failed to establish and open a ferry under the act of 1866, within two years from its passage, the act became void.

In 1868 (c. 352) the Maverick Bridge Co. were authorized to erect a bridge over tide waters between the city proper and East Boston. In the following year (1869, c. 155) the act was repealed.

By St. 1872, c. 241, the East Boston Tunnel Company was incorporated.

² In 1869 the city entered into a contract with the East Boston Ferry Company, to purchase their franchise and property for the sum of \$275,000, said property to be delivered to the city on the first day of April, 1870. As it does not appear from the action of the city council, whether the purchase was made under the authority of the act incorporating the ferry company, or under the act of 1869, c. 155, the provisions of both acts, so far as they relate to the purchase and management of the ferry by the city, are here given.

five hundred thousand dollars, bearing interest at a rate not exceeding the legal rate of interest in this commonwealth; and said interest shall be payable semi-annually, and the principal shall be payable at periods not more than forty years from the issuing of the said scrip, notes, or certificates respectively. And the said city council may sell the same, or any part thereof, from time to time, at public or private sale, or pledge the same for money borrowed for the purpose aforesaid, on such terms and conditions as the said city council shall judge proper. All notes, scrip and certificates of debt, to be issued as aforesaid, shall be signed by the treasurer and auditor, and countersigned by the mayor of the said city, and a record of all such notes, scrip, and certificates shall be made and kept by the said treasurer and auditor respectively." 1852, c. 244, § 10.

5. The act also provided that "whenever said city of Boston shall purchase said ferry of said company, all the rights, powers, and authority, given to said company by this act, shall be vested in, and exercised by, said city of Boston, subject to all the duties, liabilities, and restrictions, herein contained, in such manner, and by such agents, officers, and servants, as the city council shall from time to time ordain, appoint, and direct. And said city of Boston shall have the right to collect and receive the same rates of toll as are allowed by the second section of this act to said company: *provided*, that, whenever the tolls collected on said ferry shall be sufficient to reimburse the said city of Boston for the cost of said ferry, with such a per cent. interest, annually, as said city of Boston pays on said 'Boston Ferry Scrip,' and for all the expenses of the repairs and additions to said ferry, and all the current and incidental expenses of its superintendence and management, and to provide such a fund as the said city council may regard sufficient for the future support of said ferry, then the tolls on said ferry shall cease, and said ferry shall ever after be maintained by said city of Boston as a free ferry: *provided, also*, that the said city council shall have the power and authority to re-establish such rates of toll on said ferry as may be sufficient to pay the current and incidental expenses of the superintendence and management thereof, whenever the fund aforesaid shall be found insufficient for its support, and that the income, rents and receipts of said ferry, after deducting all expenses and charges of support and main-

After purchasing, the city may run the ferry and establish tolls, etc.
Ibid. § 11.

1852, c. 244, § 11. tenance, shall be set apart as a sinking fund, and shall be appropriated for and towards the payment of the principal and interest of said scrip, and for the accumulation of the fund aforesaid; and shall, under the management, control, and direction of the mayor, treasurer, and auditor of said city, or the major part of them for the time being, who shall be trustees of the said fund, be applied solely to the use and purpose aforesaid. And the said trustees shall, whenever thereto required by said city council, render a just, true, and full account to the said city council of all their receipts, payments, and doings under the provisions of this section."

City of Boston may purchase franchise and property of East Boston ferry company.
1869, c. 155, § 1.

6. By chapter 155 of the acts of the year 1869, the city council of Boston was authorized, for the purpose of improving private property, and of protecting the same and the travel and business between the main land, in said city and East Boston, from the disabilities and burdens of the ferry communications heretofore existing between said parts of the city, and of furnishing additional facilities to said travel and business, to purchase the boats and so much of the other property, including the franchise of the East Boston Ferry Company, as they shall think expedient, at such price as may be agreed upon between them and the said ferry company, with the approval of the mayor of said city, and to ordain and establish the present or such other lines of ferry travel as they may see fit between the said parts of said city, and to cause the said ferry to be maintained thereon in such manner and upon such rates of ferriage as the board of aldermen of said city shall from time to time judge the best interests of the said city to require, excepting only as hereinafter provided.

May establish rates of ferriage.

May maintain ferry free of tolls.
Ibid. § 2.

7. Upon the completion of said purchase the said city council shall consider and determine whether the interests of said city will be best promoted by maintaining said ferry thereafter free of tolls; and in case they shall decide the same in the affirmative, then the said city shall maintain and operate, or cause to be maintained and operated, the said ferry thereafter free of all tolls, and with facilities for travel not less than those now furnished by said company, or those which now are, or hereafter may be, by law required.

Aldermen to determine what portion of cost

And in such case the said board of aldermen shall adjudge and determine whether the territory of that part of the said city called

East Boston and Breed's island, or any and what part thereof will receive any benefit and advantage therefrom, beyond that general advantage which will be received therefrom by other portions of said city, and what portion of the cost of such purchase shall be borne by the city, and what portion by the owners of real estate in said East Boston and Breed's island, or the portion thereof so adjudged to be benefited, by reason of said benefit. A notice of such determination shall be published for two weeks successively in some one newspaper published in said city.

shall be borne
by owners of
real estate in
East Boston.
1869, c. 155, § 2.

8. Any person aggrieved by the determination of said board, either as to the benefit received or as to the division of the expense between the city and the owners of real estate as aforesaid, may at any time within two months after the first publication of the notice aforesaid, apply for a jury. Such application shall be made in like manner, and the proceedings thereon shall be the same, as in the case of laying out and discontinuing highways in the said city: *provided*, that before making his application the party shall give one month's notice in writing to said board of aldermen of his intention so to apply, and shall therein particularly specify his objections to the determination of said board as to the benefit received, and the proposed division of expense, to which specification he shall be confined upon the hearing before the jury: and, *provided, also*, that if the superior court within and for the county of Suffolk shall not be in session at any term thereof at the time of such application, the filing of his petition in the office of the clerk of said court shall be deemed an application for the purposes of this act. If, upon the hearing, the objections to said determination are not sustained, the charges arising on such application shall be paid by the applicant or person recognizing therefor, otherwise they shall be paid by the city, and the board of aldermen may, if necessary, determine anew the benefit and division of expense aforesaid, or either of them, and may make such abatements as they may judge expedient. Any person who neglects to make application for a jury as herein provided, shall be concluded in all respects under this act by said determination of said board of aldermen, and shall not be entitled by any process, either at law or in equity, to prevent the said assessment or to recover the amount of any assessment collected of him.

Parties ag-
grieved may ap-
ply for jury.
Ibid. § 3.

Proceedings as
in case of laying
out highways.

If jury is not
applied for, de-
termination of
aldermen to be
final.

Decision of aldermen to be certified to assessors, and assessments to be made upon estates benefited. 1869, c. 155, §4.

Proviso.

9. After two months from the final determination of said board of aldermen as to the division of the expense of such purchase and the territory benefited thereby as aforesaid, the said board of aldermen shall cause to be certified to the assessors of said city the portion of the cost of said purchase which is to be borne by the owners of real estate within said territory to be benefited, which shall be by said assessors equitably and ratably assessed upon the said owners of real estate in said district adjudged to be benefited, and shall constitute a lien upon said real estate, and shall be collected and enforced with like charges for costs and interest, and in the same manner and with the same powers in all respects as are provided by law for the collection of taxes on real estate: *provided*, that the said board may, if they shall judge the public interest to require it, apportion the said amount to be assessed as aforesaid into not exceeding five equal parts, which apportionment shall be also certified to the said assessors, who shall add one of said equal parts yearly to the annual tax of said estates adjudged to be benefited as aforesaid, but pursuant to the original assessment made as aforesaid.

City may operate ferry with more boats and at reduced rates of ferriage. Ibid. § 5.

10. If the said city council, upon the completion of said purchase, shall adjudge and determine that instead of maintaining said ferry free of all tolls, it is for the best interests of said city that the said ferry shall be thereafter operated with more boats and greater facilities for travel and business than are now furnished by said company, and at one cent ferriage for a foot-passenger, instead of two cents as heretofore charged, and with the other rates of ferriage thereon so reduced that the receipts of said ferry annually shall not exceed the cost of operating the same, instead of paying, as provided by the charter of said company, at least eight per cent. annual dividends, then, and in such case, the said city shall thereafter maintain and operate, or cause to be maintained and operated, the said ferry, with such greater accommodations and at such reduced rates of ferriage as aforesaid, or with such other and still greater accommodations and at such more reduced rates of ferriage as the said board of aldermen may from time to time judge expedient for the purposes mentioned in the first section of this act. And the said board of aldermen, having first adjudged and determined the territory, if any, that shall be thereby spe-

cially benefited as aforesaid, may also adjudge and apportion, not exceeding one-half part of the cost of such purchase, to be assessed upon the said estates adjudged to be benefited as aforesaid, in the same manner, and with the same powers and liabilities in all respects as are hereinbefore provided respecting such assessment.

11. If the said city council, instead of adjudging to maintain said ferry free of all tolls, as provided in section two of this act, shall adjudge and determine that it is for the best interests of said city that the said ferry shall be maintained free of tolls for a term of not less than ten years next succeeding said purchase, and thereafter upon such rates of ferriage as may then be adjudged by said city, then, and in such case, the said city shall maintain and operate, or cause to be maintained and operated, the said ferry, for and during a term of not less than ten years next succeeding said purchase, free of all tolls, but in all other respects as provided by section five of this act [§ 10 of this digest], and may thereupon apportion, not exceeding one-half part of the cost of such purchase, upon the said estate benefited, with the same powers and under the same limitations as hereinbefore provided respecting such assessment.

City may maintain ferry for ten years free of tolls, and subsequently apportion one-half of cost of purchase upon estates benefited.
Ibid. § 6.

12. The said board of aldermen shall have power at all times, notwithstanding any of the provisions of this act, or anything done by said city in pursuance thereof, to levy and collect such rates of ferriage as they shall judge expedient, for and upon all teams and vehicles passing over said ferry to or from any place beyond the limits of said city.¹

May collect tolls for all vehicles passing to or from places beyond limits of city.
Ibid. § 7.

ORDINANCE.²

SECTION 1. In the month of January, annually, the city council shall elect, by concurrent vote of the two branches, one member of the board of aldermen and

Directors of East Boston ferries. How chosen.
Feb. 11, 1870.

¹ By an act passed in 1871 (c. 225) the city was authorized to take lands, flats, docks, wharves, etc., between Commercial wharf and India wharf for the purposes of a landing for the East Boston ferry-boats. The authority expired by limitation in 1873. In 1874, another act was passed authorizing the city to take the property; but no action was taken under it, and it expired, by limitation, on the 25th February, 1876.

² An ordinance to establish a board of directors for the East Boston ferries, passed February 11, 1870.

Feb. 11, 1870.

two members of the common council to be members of the board of directors for the East Boston ferries, to hold office during the remainder of the municipal year in which they are elected, and until others are elected in their place, unless sooner removed. In the month of March or April, annually, there shall be elected, from the citizens at large, by concurrent vote of the two branches of the city council, two members of the board of directors for the East Boston ferries to hold their office for two years from the first Monday in May in the year of their election, and until others are elected in their place, unless sooner removed. The members of said board shall at all times be subject to removal from office by the city council for cause; and vacancies from any cause may be filled at any time for an unexpired term, in the same manner as the original appointment.

Organization of
board.
Ibid.

SECT. 2. The persons elected from the city council shall enter upon their duties as members of said board forthwith; and the persons elected from the citizens at large shall enter upon their duties on the first Monday in May. On the first Monday in May, annually, the members shall meet and organize themselves into a board, by the choice of one of their number as president. They shall also choose a clerk, who shall not be a member of the board; and they may make such rules and regulations for their own government and for the government of all subordinate officers by them appointed, as they shall deem expedient. A majority of the whole board shall be necessary to constitute a quorum for the transaction of business.

SECT. 3. The said board of directors shall have the general care and management of the East Boston ferries owned by the city; and for that purpose they shall have and exercise all the powers vested in the city council by the eleventh section of chapter two hundred and forty-four of the acts of the year one thousand eight hundred and fifty-two; and chapter one hundred and fifty-five of the acts of the year one thousand eight hundred and sixty-nine, so far as the same can be legally delegated.

To have care
and manage-
ment of ferries.
Feb. 11, 1870.

SECT. 4. The said board of directors shall, annually, as soon as may be after its organization, and whenever any vacancy exists, appoint a suitable person for superintendent of the ferries, who shall hold his office for one year from the time of his appointment, and until some other person is appointed in his place, unless sooner removed. The superintendent may be removed at the pleasure of the directors, and shall receive such compensation as the city council may from time to time determine. The board may appoint such assistants and subordinate officers as they may think necessary or expedient, and may remove them whenever they see fit, and shall fix their compensation, and also the compensation of the clerk before mentioned: *provided*, that the amount thus paid shall not exceed, in the whole, the sum appropriated by the city council therefor.

Superintendent
and clerk; ap-
pointment and
salaries.
Ibid.

SECT. 5. The said board of directors shall, annually, in the month of May, present to the city council a report in print, made up to, and including,

Annual report.
Ibid.

Feb. 11, 1870.

the thirtieth day of the preceding April, containing a carefully prepared statement of the condition of the ferry-boats and the slips, drops and buildings used for ferry purposes, the number of persons and the number of teams of different classes that have passed over the ferries during the year; also a statement in detail of the receipts and expenditures, with such other information or suggestions as they may deem important, or the city council may require. In the statement of expenditures no sums shall be included, except such as have been audited by the auditor of accounts and made payable by the city treasurer within the year. At any time during the year the said board shall, upon the order of the city council, report upon the condition of the ferries, and any facts relating thereto that may be within their knowledge.

Sufficient boats
to be provided.
Ibid.

SECT. 6. Whenever, in the opinion of said board of directors, additional accommodations are needed for the transportation of persons, horses, cattle, carriages, wagons, goods, and merchandise between East Boston and the city proper, or improvements of a permanent character are required, they shall send to the city council a statement of the extent and character of the additional accommodations or improvements required, with an estimate of the expense of furnishing the same, and the rates of ferriage necessary to cover the additional expense and the interest on the ferry scrip. The boats furnished by the city council shall be run at such times, and in such manner, as the board may direct.

Rates of toll.
Ibid.

SECT. 7. The city council shall, by special order, establish the rates of toll to be received and collected when the ferries come into possession of the city;

said rates to be based upon an income sufficient to ^{Feb. 11, 1870.} cover the current expenses of maintaining the ferries, and the payment of the interest on the ferry scrip: and whenever thereafter the city council deem it expedient, they may alter or amend said rates, provided that the income from the rates established shall always be sufficient to cover said expenses and interest.

SECT. 8. The said board of directors shall make <sup>Repairs of
drops, boats,
etc.
Ibid.</sup> all necessary repairs and alterations in the ferry boats, and the slips, drops, tanks and buildings used for ferry purposes, provided that the expense shall not exceed the amount appropriated therefor by the city council; but they shall not purchase any additional boats, or erect any new buildings, without first obtaining the approval of the city council. When supplies or materials are required in operating the ferries, exceeding in value the sum of five hundred dollars, the board shall advertise in the newspapers employed by the city to publish its advertisements, for sealed proposals to furnish such supplies or materials, describing particularly the quality and quantity required, and the times and places of delivery. Such proposals as may be received shall be opened at a public meeting of the board, and the contracts shall be awarded to the lowest bidder: *provided*, the board shall deem it for the best interest of the city; and the person contracting shall furnish satisfactory security for the faithful performance of his contract. No member of the board, either directly or indirectly for himself personally, or in trust for any other per-

Feb. 11, 1870. son, shall have any pecuniary interest in furnishing supplies for the ferries, or in any contract for the same.

Collectors of
tolls, bonds.
Ibid.

SECT. 9. The amounts received for tolls, or from other sources, shall be paid into the city collector's office on the day following the day of the receipt thereof; provided that the clerk may retain a sum not exceeding one thousand dollars for making change and other purposes. The persons appointed by the board of directors to receive and collect tolls shall give bonds in the penal sum of five thousand dollars, with sureties satisfactory to the said board, for the faithful performance of their duties.

Payment of
bills.

SECT. 10. All bills for expenditures by the said board of directors shall be drawn for by the president, examined by the auditor, and approved by the committee on accounts before they are paid by the treasurer.

FIELD DRIVERS, POUND KEEPERS AND IMPOUNDING OF CATTLE.¹

STATUTES.

Pounds to be
provided by
towns.
Penalty for
for neglect.
G. S. c. 25, § 18.
6 Allen 408.
Penalty for
injuring
pounds.
Ibid. § 19.

1. Each city and town shall, at its own expense, and in such places therein as the city council of the city or the inhabitants of the town direct, maintain one or more sufficient pounds. A city or town that for three months neglects to provide or maintain a sufficient pound shall forfeit fifty dollars.

2. Whoever wilfully injures a city or town pound shall be punished by fine not exceeding fifty dollars, or by imprisonment in the common jail not exceeding ninety days.

¹ For act to regulate the driving of cattle in streets, etc. (St. 1876, c. 20), see "Streets," *post*, p. 764.

3. Each city and town shall annually appoint a suitable keeper of each pound therein. Whenever a vacancy occurs in the office the selectmen may appoint some suitable person to fill the same.¹

Pound keepers.
G. S. c. 25, § 20.
1864, c. 174.

4. Every field driver within his city or town shall take up at any time, swine, sheep, horses, asses, mules, goats, or neat cattle, going at large in the public highways or townways or on common and unimproved lands, and not under the care of a keeper; and for any such cattle or beasts so going at large on the Lord's day, the field driver or any other inhabitant of the city or town may in an action of tort recover for each beast the same fees which the field driver is entitled to receive for like beasts when distrained and impounded.

Beasts going at large without keeper to be taken up, etc.
G. S. c. 25, § 21.
21 Pick. 187.
23 Pick. 251.
12 Met. 198.
2 Gray, 180.
4 Gray, 314, 345.
1 Allen, 270.
3 Allen, 39.
6 Allen, 408.
16 Gray, 265.

5. When beasts are so taken up and distrained by a field driver, they shall be forthwith impounded in the city or town pound, and the keeper shall furnish them with suitable food and water while they are detained in his custody.

Beasts to be impounded.
Ibid. § 22.
5 Cush. 263.
12 Cush. 98, 103.
4 Gray, 312.
6 Allen, 408.
See 1869, c. 366.

6. The field driver shall be entitled to fifty cents per head, for horses, asses, mules, and neat cattle, and ten cents per head for sheep and goats, and fifty cents for swine so taken up by him, and the pound keeper shall be entitled to four cents per head for the animals so impounded; but if more than ten sheep are taken up at the same time, the fees for all above that number shall be only one half of the above fees.

Fees of field driver and pound keeper.
Ibid. § 23.
1863, c. 178.

7. The pound keeper shall not deliver to the owner any beast so impounded until the owner pays him his fees, the expense of keeping the beasts, and the fees of the field driver, which latter, when received, he shall pay to the field driver.

Fees to be paid by owner of beasts.
Ibid. § 24.
21 Pick. 181.
5 Cush. 263.

8. When a person is injured in his land by sheep, swine, horses, asses, mules, goats, or neat cattle, he may recover his damages in an action of tort against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts were lawfully on the adjoining lands, and escape therefrom in consequence of the neglect of the person who suffered the damage to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

Beasts doing damage may be distrained.
Ibid. § 25.
5 Greenl. 356.
6 Mass. 90.
16 Mass. 37.
4 Met. 589.
13 Met. 407.
10 Allen, 544.

9. The beasts so distrained for doing damage shall be impounded in the city or town pound, or in some suitable place,

Beasts to be impounded.

¹ The city is not responsible for the fidelity of its field drivers. 12 Cush. 133.

G. S. c. 25, § 23. under the immediate care and inspection of the person who dis-
 17 Pick. 415. trained them, and he shall furnish them with suitable food and
 13 Met. 407. water while they remain impounded.
 10 Allen, 544.

Persons dis- 10. If the beasts are impounded in the city or town pound,
 training to state the distrainer shall leave with the pound keeper a memorandum
 demand. in writing under his hand, stating the cause of impounding, and
 Ibid. § 27. the sum that he demands from the owner for the damage done
 21 Pick. 187. by the beasts, and also for the daily charges of feeding them;
 23 Pick. 251. and if they are impounded in any other place, he shall give a
 12 Met. 198. like memorandum to the owner of the beasts if demanded by
 13 Met. 407. him.
 10 Allen, 544.

Beasts not to be 11. The pound keeper, when the beasts are in his custody,
 delivered until shall not deliver them to the owner until the owner pays him his
 costs, etc., are fees, the sum so demanded by the distrainer for the damages and
 paid. charges aforesaid, the expense of advertising the beasts, if they
 Ibid. § 28. are advertised, and all other legal costs and expenses.
 5 Cush. 263.

Notice to be 12. When beasts are impounded, the person impounding them
 given to owner shall, within twenty-four hours thereafter, give notice thereof in
 or keeper. writing to the owner or person having the care of them, if known
 Ibid. § 29. and living within six miles from the place of impounding, which
 21 Pick. 187. notice shall be delivered to the party or left at his place of abode,
 23 Pick. 251. and shall contain a description of the beasts and a statement of
 12 Met. 118, 198. the time, place and cause of impounding.
 7 Cush. 355.
 2 Gray, 178.
 3 Allen, 39.
 10 Allen, 544.

Notices to be 13. If there is no person entitled to notice according to the
 given or posted provisions of the preceding section, the person impounding the
 up, and pub- beasts shall, within forty-eight hours thereafter, cause to be posted
 lished in a in some public place in the city or town, and in a public place in
 newspaper, in each of any two adjoining cities or towns, if within four miles
 case, etc. from the place where they were taken, a written notice, contain-
 Ibid. § 30. ing description of the beasts and a statement of the time, place,
 12 Met. 198. and cause of impounding them; and in such case, if the value of
 3 Allen, 39. the beast exceeds thirty dollars, and if no person appears to
 claim them within seven days after the day of impounding, a like
 notice shall be published three weeks successively in some public
 newspaper, if there is any published within twenty miles from
 the place of impounding, the first publication to be within fifteen
 days after the day of impounding.

Sum due from 14. If the owner or keeper of the beasts is dissatisfied with

the claim of the person impounding them, he may have the amount for which he is liable ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace or by the city or town clerk; and the sum so determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

owner, how
determined.
G. S. c. 25, § 31.

15. If the sum for which the beasts are impounded and detained is not paid within fourteen days after notice of the impounding has been given as before directed, or after the last publication of such notice in a newspaper, the person who impounded them shall apply to a justice of the peace, or to the city or town clerk, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice or clerk, and the person so appointed shall ascertain and determine the sum due from the owner or keeper of the beasts for the damages, costs, and expenses for which they are impounded and detained, including a reasonable compensation for their own services.

Same subject.
Ibid. § 32.
21 Pick. 55.

16. If the sum so found to be due is not forthwith paid, the person who impounded the beasts shall cause them to be sold by auction in the city or town where they are impounded, first advertising the sale by posting up a notice thereof twenty-four hours beforehand at some public place in the same city or town.

If not paid,
beasts to be sold.
Ibid. § 33.
21 Pick. 55.

17. The proceeds of such sale, after paying all said damages, costs, expenses, and charges for advertising and selling the beasts, shall be deposited in the treasury of the city or town for the use of the owner of the beasts, in case he substantiates his claim thereto within two years from the sale.

Proceeds, how
disposed of.
Ibid. § 34.

18. If beasts lawfully distrained or impounded escape or are rescued, the pound keeper, field driver, or other person who distrained them, may, at any time within seven days thereafter, retake the beasts and hold and dispose thereof as if no such escape or rescue had taken place.

Beasts escaped
or rescued may
be retaken.
Ibid. § 35.
17 Mass. 342.

19. Whoever rescues beasts lawfully distrained or impounded, for any cause whatever, shall be liable in an action of tort, brought by any person injured, to pay all damages which such person sustains thereby, and the fees and charges incurred before the

Penalty for res-
cuing beasts dis-
trained.
Ibid. § 36.
1 Mass. 168.

G. S. c. 25, § 36.
 1 Mass. 168.
 4 Mass. 471.
 17 Mass. 342.
 17 Pick. 415.
 5 Cush. 267.

Legality of distress, how tried.
 Ibid. § 37.
 4 Mass. 471.
 5 Pick. 514.
 See G. S. c. 146.
 5 Cush. 267.

Rams and he-goats, when not to go at large.
 Ibid. § 33.

rescue; and he shall also forfeit a sum not less than five nor more than twenty dollars, to be recovered by complaint.

20. The defendant, in an action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal; but if there is such ground of objection to the proceeding of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin.

21. If the owner of a ram or he-goat suffers it to go at large out of his enclosures between the first day of July and the twenty-fifth day of December, he shall forfeit five dollars for each offence, if prosecuted within thirty days next after such ram or he-goat is found going at large, to be recovered on complaint in the county in which such owner lives.

FINANCE.

STATUTES.

Treasurer to be chosen.
 1875, c. 176, § 1.

1. The treasurer of the city of Boston shall hereafter be elected annually in the month of May or June by concurrent vote of both branches of the city council. He shall continue to exercise all the powers now by law belonging to his office, except those hereinafter given to the collector of the city of Boston; and he may be removed by the mayor, with the approval of the city council.

Collector to be chosen.
 Ibid. § 2.

2. There shall be elected annually, in the month of May or June, by concurrent vote of both branches of the city council, a suitable person to be collector of the city of Boston, who shall hold his office until his successor is chosen and qualified. Said collector shall have the powers now possessed by the treasurer of said city as collector of taxes, and shall also collect and receive all assessments, betterments, rates, dues, and money payable on any account to the city of Boston or the county of Suffolk, and shall have all the powers with respect to such collections now possessed by the treasurer of said city, and shall pay over any and all money re-

ceived by him to said treasurer, within twenty-four hours after receiving the same, taking said treasurer's receipt therefor in duplicate; and shall file with the auditor of accounts of said city the duplicate copy of the same. He shall give bond with such sureties and in such sum, and shall receive such compensation as the city council shall determine; and he may be removed by the mayor, with the approval of the city council.

3. All fees, charges and commissions of every kind and description allowed by law for the collection of taxes, betterments, rates and assessments of every kind, to any person or persons authorized to collect the same within the city of Boston, shall, after the first day of September, eighteen hundred and seventy-five, be collected and paid by such persons into the treasury of the city of Boston, and shall become the property of said city. The said city is hereby authorized to pay to such persons such compensation for their services as the city council shall from time to time determine.¹

Fees, commissions, etc., to go to city.
Ibid. § 3.

LIMIT OF MUNICIPAL INDEBTEDNESS.

4. The assessors of cities and towns shall each year assess taxes to an amount not less than the aggregate of all sums appropriated, granted or lawfully expended by their respective cities or towns since the last preceding annual assessment and not provided for therein; and of all sums which are required by law to be raised by taxation by the said cities or towns during said year; and of all sums which are necessary to satisfy final judgments recovered against the said cities or towns; but such assessments shall not include sums for the payment of which cities or towns have voted to contract debts according to the provisions of the third section of this act; and the assessors may deduct from the amount required to be assessed, the amount of all the estimated receipts of their respective cities or towns (except from loans or taxes) which are lawfully applicable to the payment of the expenditure of the year, but such deduction shall not exceed the amount of such receipts during the preceding year; and such

Taxes to be assessed equal to aggregate of all sums appropriated, etc., since last annual assessment.
1875, c. 209, § 1.

¹This act (1875, c. 176) did not take effect until accepted by the city council. It was accepted May 17, 1875. City Records, vol. liii., pp. 586-599.

1875. c. 209, § 1. assessments shall be made in the manner provided by law for the assessment of taxes; and any assessor wilfully neglecting to make an assessment required by this act shall be subject to the penalties provided by law for neglecting to assess taxes.

Debts not to be incurred except by vote of the town for temporary loans.
Ibid. § 2.

5. No debts shall hereafter be incurred by any city or town except debts for temporary loans in anticipation of the taxes of the year in which such debts are incurred, and of the year next ensuing, and expressly made payable therefrom by vote of the said city or town; and except as hereinafter provided.

Other debts to be incurred only by a two-thirds vote.
Ibid. § 3.

6. Debts, other than those authorized by the second section of this act, shall hereafter be incurred by a town only by a vote of two-thirds of the legal voters present and voting at a legal meeting, and by a city only by a vote of two-thirds of all the members of each branch of the city council, taken by yeas and nays, and, in any city where the mayor has the veto power, approved by the mayor, or, if he disapprove said vote, by another like vote taken after notice of such disapproval, which notice shall be given within ten days from the time in which the vote of the city council shall have been laid before the mayor; and if the mayor shall fail to give such notice to the branch of the city council in which said vote was first taken, he shall be deemed to have approved said vote of the city council.

To be payable within ten years of time of contracting the same.
Ibid. § 4.

7. Any debt contracted by a city or town, as provided by the third section of this act, shall be payable within a period not exceeding ten years from the time of contracting the same, and said city or town shall annually raise by taxation an amount sufficient to pay the interest thereon as it accrues, and shall also annually raise by taxation a sum not less than eight per centum of the principal thereof, until a sum is raised sufficient, with its accumulations, to extinguish the debt at maturity, which sum shall be set apart for that purpose, and shall be used for no other purpose; and any balance required to extinguish said debt shall be raised by taxation at the annual assessment next preceding its maturity: *provided, however*, that debts incurred in constructing general sewers may be made payable at a period not exceeding twenty years from the time of contracting the same, and that debts incurred in supplying the inhabitants with pure water may be made payable at a period not exceeding thirty years from the

Provisos.

time of contracting the same: and *provided, also*, that when the debt is, under the authority of this act, made payable at a period exceeding ten years from the time of contracting the same, said town or city shall, and when it is made payable at a period not exceeding ten years, said town or city may, besides paying the interest as it accrues, from taxes assessed for the purpose, establish, at the time of contracting the debt, a sinking fund, and contribute thereto from year to year an amount raised annually by taxation, sufficient, with its accumulation, to extinguish the debt at maturity; and said sinking fund shall remain sacred and inviolate and pledged to the payment and redemption of said debt, and shall be used for no other purpose. 1875, c. 209, § 4.

8. Any town establishing a sinking fund under the provisions of this act shall, at the time of establishing the same, elect, in the manner in which selectmen are by law required to be elected, three or six suitable persons as commissioners of its sinking funds, and any city establishing such a fund shall elect such commissioners by a concurrent vote of both branches of the city council. One-third of the number shall be elected for one, two and three years respectively. And annually thereafter there shall be elected, for a term of three years, a number equal to the number whose term of service then expires. Vacancies occurring in the board of commissioners shall, in towns, be filled by the remaining member or members and the selectmen, by a majority of ballots of the officers so entitled to vote, at a meeting called for the purpose by the selectmen; and in cities such vacancies shall be filled by the city council in the manner above provided for the election of the commissioners. The remaining member or members shall in case of a vacancy exercise the powers of the board till the vacancy is filled. The city or town treasurer shall not be eligible as a commissioner of sinking funds, and the acceptance of the office of treasurer by a commissioner already elected shall work a resignation of the office of commissioner. But the foregoing provisions as to the mode of electing commissioners and filling vacancies shall not apply to boards of sinking fund commissioners already established. Commissioners
of sinking funds
to be elected.
Ibid. § 5.

The commissioners shall choose a treasurer, who may be the city or town treasurer, and if the city or town treasurer shall be chosen, his bond shall apply to and include duties performed under Commissioners
to choose a
treasurer.

1875, c. 209, § 5. this act. If any other person shall be chosen as treasurer, he shall give a bond, with sureties, to the satisfaction of the commissioners, for the proper discharge of the duties of his office.

The commissioners shall receive all sums contributed to a sinking fund and invest and reinvest the same, and the income thereof as it shall accrue, in the name of the board, in the particular scrip, notes or bonds for the redemption of which such sinking fund was established, or in other bonds of said town and city, which are secured by sinking funds, or in the securities in which by law the funds of savings banks may be invested, except personal securities, although guaranteed by sureties; but no portion of the same shall be loaned to the city or town except as herein provided; and the commissioners may sell and reinvest such securities when required in their judgment for the good management of the fund. They shall keep a record of their proceedings; and shall annually, at the time when other municipal officers are required to make an annual report, make a written report to the city or town of amount and condition of said funds and the income thereof, for the then preceding financial year. The record, and the securities belonging to said funds, shall at all times be open to the inspection of the selectmen, mayor and aldermen, or any committee of said city or town duly authorized for the purpose. The necessary expenses of the board shall be paid by said city or town; and the treasurer and secretary thereof shall receive such compensation as shall be fixed by the city or town, but no commissioner shall receive compensation for his services.

To keep record of proceedings.

Securities in sinking fund to be stamped as not negotiable.

When any securities issued by the city or town become a part of a sinking fund, the commissioners shall cause to be stamped or written on the face thereof a notice that they are a part of such sinking fund, and are not negotiable; and the coupons thereof, as they become due and are paid, shall be cancelled.

Cities and towns not to become indebted beyond three per cent. of valuation.
1875, c. 209, § 6.

9. No city or town, except as hereinafter provided, shall become indebted to an amount (including existing indebtedness) exceeding in the aggregate three per centum on the valuation of the taxable property therein, to be ascertained by the last preceding city or town valuation for the assessment of taxes. In determining the amount of indebtedness under this act, the amount of the sinking funds shall be deducted from the gross indebtedness.

10. Cities or towns indebted when this act takes effect, to an amount not less than two per centum on their valuation as aforesaid, may increase such indebtedness to the extent of an additional one per centum on their valuation, but no more; and when such indebtedness of any city or town exceeds five per centum on its valuation as aforesaid, such city or town shall raise annually by taxation a sum sufficient to pay the interest on its whole indebtedness, and to make the necessary contributions to a sinking fund which shall be established for the redemption of the same at a period not exceeding thirty years from the time this act takes effect in the manner provided in the fourth and fifth sections of this act; and any city or town indebted when this act takes effect to an amount less than five per centum and more than one per centum on its valuation as aforesaid, shall make like provision for the payment of the interest on its whole indebtedness, and for the extinction of such indebtedness within a period not exceeding twenty years from the time this act takes effect, but it shall be sufficient to make such provision for the extinction of indebtedness contracted in supplying the inhabitants with pure water within a period not exceeding thirty years from the time this act takes effect, and to make like provision for the extinguishment of any existing funded debts, when the same mature.

When indebted not less than two per cent. on valuation, may be increased one per cent.
1875, c. 209, § 7.
When debt exceeds five per cent., sinking fund to be established, etc.

11. Nothing contained in this act shall be construed as prohibiting the inhabitants of towns, or city councils, from paying or providing for the payment of any municipal debts at earlier periods than is herein required, or from renewing the same in securities payable within the period required for the final payment of the debt, or from adding to any sinking funds, or funds for the extinguishment of any debt, the excess of municipal appropriations over the amounts required for the purpose thereof, or any sums derived from taxation or special assessments, or other sources, which are not required by law to be otherwise expended; and such additions may be made for the purpose of reducing the entire debt for the redemption of which the sinking fund was established, or of reducing the amount to be raised by taxation for such fund.

Payment of debts at earlier periods not prohibited by this act.
Ibid. § 8.

12. No part of the sinking funds of the commonwealth shall hereafter, except for the renewal of existing loans, be loaned to any city or town the indebtedness of which shall exceed five per centum of its valuation as aforesaid, or which shall not comply

Loans from sinking funds of state not to be made to towns whose debt exceeds five per

cent. on valuation.
1875, c. 209, § 9.

Towns, etc., not
exempted from
payment of
debts lawfully
contracted.
Ibid. § 10.

S. J. C. may
compel compli-
ance by manda-
mus, etc.
Ibid. § 11.

When act for
water supply
has been ac-
cepted by a two-
thirds vote of
legal voters, the
debts author-
ized may be
contracted by a
majority vote of
city council.
1876, c. 19.

Interest author-
ized upon ac-
counts current
of cities and

with the provisions of this act; but the certificate of the treasurer of any city or town as to the percentage of its indebtedness, and as to such compliance, shall be deemed satisfactory evidence thereof, for the justification of the treasurer of the commonwealth in making any such loan, unless he has reasonable cause to suppose that the statements of such certificate are not true.

13. The restrictions of this act shall not exempt any city or town from its liability to pay debts contracted for purposes for which cities or towns may lawfully expend money; and the limits of municipal indebtedness prescribed by this act shall be exclusive of debts created for supplying the inhabitants with pure water, and its provisions shall not apply to subscriptions lawfully made to the capital stock or securities of railroad corporations.

14. The supreme judicial court may, upon the suit or petition of the attorney-general, or of one or more taxable inhabitants of any city or town, or of any creditor to whom the said city or town appears to said court indebted in an amount not less than one thousand dollars, compel the said city or town and its assessors, collectors, treasurers, commissioners of sinking funds, and other proper officers, to enforce the provisions of this act by mandamus or other appropriate remedy, and hear and determine any cause of complaint in equity, where such remedy is more appropriate; and any justice of said court may, in term time or vacation, issue injunctions and make such orders and decrees as may be necessary or proper to enforce the provisions of this act, and to restrain or prevent any violation thereof.

15. Any city which at a legal meeting of its legal voters duly held for that purpose has accepted, or shall hereafter accept by a vote of two-thirds of the legal voters present and voting thereon, any act to supply said city with pure water, may contract debts and issue bonds for the purposes and to the extent authorized by such act, by a vote of the majority of the members of each branch of the city council, taken by yeas and nays, in like manner as provided in, and subject to all the other provisions of, chapter two hundred and nine of the acts of eighteen hundred and seventy-five.

16. The General Statutes, chapter fifty-seven, section sixty-three, provide that banks may contract with cities and towns in this commonwealth for the payment or receipt of interest, at a

rate not exceeding that established by law, upon an account current of money deposited with and drawn from them by said cities and towns.¹

towns with
banks.
G. S. c. 57, § 63.

ORDINANCES.²

AUDITOR OF ACCOUNTS.

SECTION 1. There shall be appointed, in the month of May or June, annually, by concurrent ballot in each board, one able and discreet person, to be styled auditor of accounts; he shall continue in office until removed, or until a successor be appointed; he shall receive such compensation for his services as the city council shall authorize and establish, and may be removed at the pleasure of the city council; he shall be sworn to the faithful discharge of the duties of his office, and give bond with surety or sureties, to be approved by the board of aldermen, in the penal sum of five thousand dollars, for the faithful discharge of said duties, the true accounting for, and

Auditor of ac-
counts. His ap-
pointment.
Dec. 22, 1825.
Sept. 10, 1869.

Oath.

Bond.

¹ For provisions in relation to the deposit of cash funds in the hands of county treasurers, see St. 1876, c. 143. For vote of city council in relation to deposit of city funds, see City records, vol. liii., p. 1636.

² An ordinance establishing a system of accountability in the expenditures of the city, passed December 22, 1825. An ordinance concerning the public loans and reduction of the city debt, passed March 10, 1834. An ordinance providing for the more regular collection of debts due to the city of Boston, passed February 23, 1835. An ordinance further to provide for a system of accountability in the concerns of the city, passed July 27, 1835. An ordinance in addition, etc., passed December 28, 1840. An ordinance in relation to finance, passed December 28, 1854. An ordinance in addition to an ordinance on finance, passed January 12, 1855. An ordinance in relation to auditor of accounts, passed November 15, 1864. An ordinance to amend an ordinance in relation to finance, passed September 10, 1869. An ordinance in addition to the ordinance in relation to finance, passed December 24, 1870. An ordinance to amend an ordinance in addition to an ordinance in relation to finance, passed November 20, 1871. An ordinance in relation to the treasurer's department, passed June 26, 1875. An ordinance in relation to the collector's and assessors' departments, passed June 26, 1875.

Dec. 22, 1825.
Sept. 10, 1869.

Auditor *pro*
tem.; how ap-
pointed.
Nov. 15, 1864.

payment over, of all moneys which may come into his hands, and the delivery over to his successor or to the city clerk of all the books, accounts, papers, and other documents and property which may belong to said office. Whenever the office of auditor of accounts shall be vacant by death, resignation, or other cause, and whenever the auditor of accounts may be unable to perform the duties of his office by reason of sickness, absence, or other disability, the mayor may appoint an auditor of accounts *pro tempore*, who shall hold his office, unless sooner removed by the mayor, until the vacancy be filled by the city council, or until such disability shall cease, as the case may be. Any auditor of accounts so appointed by the mayor shall have all the powers, and be subject to all the duties which appertain to the said office, and he shall be sworn to the faithful discharge of the duties thereof; but no official bond shall be required of him unless the same be ordered by the mayor.

No moneys to be
paid from city
treasury, unless
vouched, etc.,
and drawn for
by mayor.
Dec. 22, 1825.

SECT. 2. No money shall be paid out of the city treasury, except in the cases hereinafter provided, unless the expenditures, or the terms of the contract, shall be vouched by the chairman of the committee of the board under whose authority it has been authorized and made; nor unless the same shall be examined by the auditor, approved by the committee of accounts, and drawn for by the mayor. The mayor shall compare such expenditures with the general appropriations made for the various objects, and require the auditor to make an exhibit of the

state of such appropriations, monthly, to the city council: *provided*, that in all cases where it is necessary for money to be paid in advance, for contracts made or for work begun but not completed, the mayor may, upon being satisfied of such necessity, draw upon the city treasurer for the amount thus necessary to be advanced; which draft shall be paid by the city treasurer, provided the same be countersigned by the auditor; and it shall be the duty of the auditor to countersign all such drafts, not exceeding three hundred dollars, and to charge the same to the proper person, and account; but the said auditor shall not countersign any such draft for any sum exceeding three hundred dollars without the direction of the committee of accounts.

Dec. 22, 1825.

Proviso.

SECT. 3. There shall be appointed in the month of January, annually, by ballot in each board of the city council, a joint committee of accounts, consisting of three on the part of the board of aldermen, and five on the part of the common council, who shall meet once a month, and as much oftener as they may deem expedient.

Joint committee of accounts.

How appointed.

Ibid.

Jan. 12, 1855.

SECT. 4. The committee of accounts shall direct the auditor as to the manner in which the books, records, and papers belonging to his department shall be kept, and the mode in which all bills and accounts against the city shall be certified or vouched; and, at least once in every month, examine, and, if it sees fit, pass all bills and accounts against the city which have been certified by the auditor.

Committee of accounts to direct the manner of keeping the auditor's books, etc., and to pass bills.

Dec. 22, 1825.

Auditor: his duty as to keeping books, and making communications to city council.
Dec. 22, 1825.

Contracts and expenditures.

Receiving, examining, and casting bills, etc.

To render other service, when required.

Auditor to lay before city council a schedule of leases.
July 27, 1835.
Sept. 10, 1869.

Estimates of money to be raised.

SECT. 5. The auditor shall keep in a neat, methodical style and manner a complete set of books, under the direction of the committee of accounts; wherein shall be stated, among other things, the appropriation for each distinct object of expenditure, and whenever the appropriations for the specific objects have been expended he shall immediately communicate the fact to the city council, and they shall either make a further appropriation, or withhold further expenditure for such object or objects, as they may deem expedient. The auditor shall also receive all bills and accounts from persons having demands against the city, examine them in detail, cast up the same, and have them filed and entered in books, in such manner and form as the committee of accounts may order and direct. And when the auditor has any doubt concerning the correctness of any such bill or account presented against the city, he shall not enter the same in a book until he shall have exhibited the same, with his objections, to the committee of accounts at their next meeting, for their consideration and final decision. The auditor shall also render such other services, from time to time, as the city council or the committee of accounts may direct.

SECT. 6. The auditor of accounts shall lay before the city council, annually, in the month of May, a schedule of all the leases of the city property, specifying severally the names of the lessees, the rates of rent, and the periods when the leases will terminate. He shall also, in the month of February, annually, lay before said council an estimate of the amount of

money necessary to be raised for the ensuing year under the respective heads of appropriation, and shall, on or before the first day of July, annually, make and lay before said council a statement of all the receipts and expenditures of the past financial year, giving in detail the amount of appropriation and expenditure for each specific object, the receipts from each source of income, and the operations of the committee on the reduction of the city debt; the whole shall be arranged, as far as practicable, so as to conform to the accounts of the city and county treasurer; and said statement shall be accompanied by a schedule of the property belonging to the city, and also by an exhibit showing the debts due by the city, the rates of interest thereon, and the years in which the same will become due.

July 27, 1835.
Sept. 10, 1869.

Statement of re-
ceipts and ex-
penditures.

TREASURER.

SECT. 7. The city treasurer shall give bond for the faithful performance of his duties, and for the safe custody of the money and other property intrusted to him, and to the officers appointed by him, with sureties satisfactory to the mayor and aldermen, in the penal sum of one hundred and fifty thousand dollars. The sureties shall be severally liable only for the sum for which in the bond they agree to hold themselves liable. He shall appoint all the officers, clerks, and other persons employed in his office, subject, however, to confirmation by the joint standing committee on the treasury department. He shall require from said officers bonds, with sureties satisfactory to said committee, for the faithful performance of their

Treasurer to
give bonds and
require bonds.
June 26, 1875.

July 17, 1860.

June 26, 1875.

respective duties, and for the safe custody of the money and other property intrusted to them, as follows: the treasurer's cashier, in the penal sum of not less than twenty thousand dollars; paying tellers, receiving tellers and paymasters, in the penal sum of not less than ten thousand dollars each.

City treasurer,
when to make
up his accounts.
Commencement
of the financial
year.
Dec. 22, 1825.

SECT. 8. The city treasurer shall make up his annual accounts to the thirtieth of April; and the financial year shall begin' on the first day of May, and end on the thirtieth day of April in each year.

Joint committee
of finance.
Their appoint-
ment and duty.
March 10, 1834.

SECT. 9. There shall be annually appointed a committee of finance, consisting of the mayor, the chairman of the board of aldermen, and seven members of the common council chosen by that board; and they shall, under the direction of the city council, negotiate all loans made on account of the city, whether on behalf of the committee on the reduction of the city debt, hereinafter mentioned, or for any other purpose, and consider and report on all subjects relating to the finances of the city.

Joint committee
to audit treas-
urer's accounts,
etc.
Ibid.

SECT. 10. There shall be appointed annually a joint committee, consisting of two on the part of the board of aldermen, and three on the part of the common council, who shall examine, audit, and settle the accounts of the city and county treasurer for the preceding financial year; and said committee shall not only compare said accounts with the vouchers thereof, but shall ascertain whether all sums due to the city have been collected and accounted for; they

shall also examine the notes, bonds, and other securities belonging to the city, and make a full and particular report of their proceedings to the city council.

March 10, 1834.

SECT. 11. Whenever the city treasurer is authorized by the city council to borrow money and give certificates of indebtedness therefor, such certificates shall be signed by the mayor, the city treasurer and the auditor of accounts; and the said certificates shall be registered in the offices of the city treasurer and the auditor of accounts.

Certificates of debt to be signed by mayor, treasurer, and auditor.
Sept. 10, 1869.

COLLECTOR.

SECT. 12. The city collector shall give bond for the faithful performance of his duties, and for the safe custody of the money and other property intrusted to him and to the officers appointed by him, with sureties satisfactory to the mayor and aldermen, in the penal sum of seventy-five thousand dollars. The sureties on said bond shall be severally liable only for the sums which in the bond they agree to hold themselves liable. He shall appoint all the officers, clerks and other persons employed in his office, subject, however, to confirmation by the joint standing committee on the treasury department. He shall require from said officers bonds, with sureties satisfactory to said committee, for the faithful performance of their respective duties, and for the safe custody of the money and other property intrusted to them, as follows: the collector's cashier in the penal sum of not less than twenty thousand dollars, and deputy collectors in the penal sum of not less than five thousand dollars each.

Collector to give bond.
June 26, 1875.

Assessors to
record tax-bills.
June 26, 1875.

SECT. 13. The assessors shall, before delivering the tax-bills of any assessment to the collector, have them correctly recorded in books prepared for that purpose, and shall have the respective amounts of said bills added together and footed at the end of each book, and the aggregates of all the books added together, to show the total amount of the taxes assessed. Said books shall be delivered to the collector with the tax-bills therein recorded.

Assessors to
render state-
ment to auditor.
Ibid.

SECT. 14. The assessors shall render to the auditor, at the time the tax-bills are delivered to the collector, a statement of the amount of said bills, and upon the first of every month a statement of the amount of all additional or supplementary assessments made during the preceding month, provided the amount thereof has not been included in any amount previously rendered. Such statement shall also include the amount of all taxes abated, or determined to be void, or remitted, which have been certified to the assessors during said month, and shall specify the year in which such taxes were laid.

Departments to
settle monthly
with collector.
Ibid.

SECT. 15. Each board, department, or officer of the city government shall, within the first ten days of every month, deliver to the collector bills of all dues which, in the course of the preceding month, have become payable through or on account of such board, department or officer to the city, and shall, every month, or oftener, pay over all moneys received and all fees collected by authority of law for, and payable to, the city, and such payment shall be accompanied

by a statement explanatory of the same, and when- June 26, 1875.
 ever any bills or moneys shall be delivered or paid
 over to the collector a statement of the aggregate
 amount of such bills or moneys shall at the same
 time be rendered to the city auditor.

SECT. 16. The collector shall make report in writ- Collector to
report monthly
to auditor.
Ibid.
 ing to the auditor, monthly, of the amount of all
 moneys collected or received by him, and the account
 upon which collected. He shall also, at the close of
 each financial year, submit to the city council a state-
 ment of all moneys by him collected during the year,
 the particular warrant, assessment or account upon
 which collected or received, and the balance of moneys
 uncollected on the respective warrants, assessments
 or schedules of departments in his hands, and a copy
 of such statement shall be filed with the auditor. He
 is expressly prohibited from using the moneys of the
 city while in his hands, or from keeping the same in
 his hands or in the hands of any person or corpora-
 tion to his use, beyond the time prescribed by statute
 for the payment of the same to the treasurer. The
 collector shall be the custodian of the notes and
 mortgages belonging to the city, and all bonds or
 other evidences of indebtedness to the city or county.

SECT. 17. The water registrar and the clerk of the Water depart-
ment to settle
monthly.
Ibid.
 Mystic water board shall, in the month of January,
 render to the collector statements of the amount
 of the annual assessments of water-rates in their
 respective departments, and, upon the first of every
 month, each shall render to the collector a statement

June 26, 1875.

of all additional or supplementary assessments made in his department during the preceding month, provided the amount thereof has not been included in any amount previously rendered. Such statements shall also include the amount of all water-rates abated or determined to be void, or remitted during the said month. Said registrar and clerk shall, at the same time that said statements respectively are made to the collector, render duplicates of the same to the auditor.

Debts due the city to be put in hands of city solicitor for suit.
Feb. 23, 1835.

SECT. 18. In all cases where specific provision is not now made, either by the laws of the commonwealth or by the ordinances of the city, for the collection of debts due to the city, whether for the principal or interest of any note or bond, or arising from any assessment, contract, or account, or in any other manner whatsoever, if the party owing such debt does not, within sixty days after demand made, pay the same, such claim of the city shall be placed by the collector in the hands of the city solicitor, who shall forthwith put the same in suit: *provided, however,* that where, in the judgment of the mayor, the interests of the city so require, he may direct any debt due to the city to be put in suit at any time after the same may become due.

CITY OFFICERS TO REPORT RECEIPTS.

City officers to lay statement of money received before city council.
July 27, 1835.

SECT. 19. The city clerk, the auditor of accounts, the chief of police, the weighers of hay, the city registrar and the superintendent of Faneuil-hall market, shall respectively, as early as may be in the

months of February, May, August, and November, July 27, 1835.
 in every year, lay before the city council a statement
 of the whole amount of money received at their
 respective offices during the three preceding months;
 specifying in detail the sums received from each
 source of income. They shall also report the
 amounts, if any, which remain due to the city and
 unpaid, and, generally, any other information which
 they may possess in relation to the said statement.

SINKING FUND.

SECT. 20. The mayor, the auditor of accounts, Commissioners
on sinking
fund.
Dec. 24, 1870.
 the chairman of the joint committee on accounts,
 and the chairman of the committee on finance on
 the part of the common council, shall, *ex officio*,
 with two persons to be chosen from the citizens
 at large, as hereinafter designated, constitute a
 board of commissioners on the sinking funds for
 the payment or redemption of the city debt. There
 shall be chosen annually, by concurrent vote of the
 two branches of the city council, one member of said
 board from the citizens at large, to hold office for
 two years from the first Monday of May following.
 The mayor shall be the chairman of the board so
 constituted, and the auditor of accounts shall be the
 secretary. The said board shall have control of the
 present sinking funds for the payment of the city
 debt, and of all funds hereafter created for that
 purpose.

SECT. 21. All bonds or certificates of debt here- Terms of future
loans.
Ibid.
 after issued on account of debts incurred in supplying

Dec. 24, 1870.

the inhabitants of Boston with pure water shall be made payable in thirty years from the date thereof; all bonds or certificates of debt issued on account of debts incurred in constructing general sewers shall be made payable in twenty years from the date thereof; all bonds or certificates of debt issued on account of debts incurred in the erection of public buildings, the improvement of streets, the purchase of property for public use, or for any other purpose than the supply of water and the construction of general sewers, shall be made payable in ten years from the date thereof. And all such bonds or certificates of debt shall be dated either on the first day of January, the first day of April, the first day of July, or the first day of October, in the year in which they are issued.

Sinking funds.
Ibid

SECT. 22. One or more sinking funds for the redemption of all city loans shall be created as follows: On account of loans made for the term of ten years, an appropriation equal to eight per cent. per annum, shall be made; on loans for twenty years, an appropriation equal to three and one-half per cent. per annum; and on loans for thirty years, an appropriation equal to two per cent. per annum. The amount so raised annually by taxation shall be paid by the treasurer to the commissioners on the sinking funds on the first day of December in each year; and the said commissioners shall invest the same, with its accumulations, in such manner as is authorized by law: provided, that whenever it shall appear to the commissioners that any sinking fund will be more than

sufficient to meet the loans for which it is intended, when it falls due, said commissioners may, in their discretion, purchase city scrip or bonds, and discontinue further taxation on account of the same for such length of time as they may deem expedient.

SECT. 23. All receipts in money on account of the sale of real estate of any description now belonging, of which may hereafter belong, to the city; all receipts on account of the principal sum of any bond or note now owned, or which may hereafter be owned, by the city; all receipts in money on account of assessments for benefit or advantage to estates by reason of the laying out, widening, discontinuance, change of grade, or other alteration of streets, shall be paid by the treasurer to the commissioners on the sinking funds.

Moneys to be applied annually to the reduction of city debt.
Dec. 23, 1840.
Sept. 10, 1869.

SECT. 24. All excess of revenue over estimates, and of appropriations over expenditures, at the close of each financial year, shall be set apart and paid by the treasurer to the commissioners on the sinking funds created by this ordinance, and only the residue of the full amount required, as specified in section twenty-two, shall be raised by taxation the year next succeeding the close of each financial year; and the amount so required shall be certified by the said commissioners to the auditor on accounts, and become a part of the amount to be raised by taxation, without further votes of the city council.

Amount to be raised by taxation.
Dec. 24, 1870.

SECT. 25. All revenue derived from undertakings for which loans may be created shall be used for the purchase of the debt of the city. All excess of rev-

Purchase of debt.
Ibid.

Dec. 24, 1870.

enue over estimates, and of appropriations over expenditures at the close of each financial year, after the requirements of section twenty-four are fulfilled, and all revenue from any other source than the sinking funds, shall hereafter be placed to the credit of the said commissioners, to be used by them for the purchase of the debt of the city, or to cover the deficit in any sinking fund, except the sinking fund for the water debt, when the debt to which it is applicable matures; and the scrip so purchased shall, so far as practicable, be that issued for the shortest term of years, and, when purchased, shall be cancelled.

Purchase of
water debt.
Ibid.

SECT. 26. All excess of income from water rates over the amount required to pay the cost of carrying on the water-works, and the interest, and exchange, if any, upon the water debt, shall be paid into the sinking fund for the purchase of the capital of said debt.

Payment of city
debt.
Ibid.

SECT. 27. Whenever any debt to be paid from the sinking fund becomes due, the commissioners shall furnish the treasurer, from the funds in their care for said payment, the sum required, or so much as shall be to the credit of said debt or loan, and take his receipt therefor; and if said amount is in excess of the debt, the residue shall be used for the purchase of the debt of the city, as hereinbefore provided.

Investment of
funds.
Ibid.

SECT. 28. The said commissioners shall invest a portion of the several sinking funds in each debt when created by the city, and shall sell the same at par to the city treasurer whenever required; and loans to the city from the sinking funds shall be made upon securities payable only to said commissioners.

SECT. 29. When in the judgment of the said commissioners any sinking fund is sufficient, with its prospective accumulations and additions, to meet the outstanding debt to which it is applicable, they shall notify the city council, so that further taxation on account of said debt may cease. Said commissioners may apply said fund to the purchase or payment of the capital of the debt of the city, in the manner they may from time to time deem expedient.

Purchase of
debt.
Dec. 24, 1870.

SECT. 30. The commissioners shall report to the city council annually, on or before the fourth Monday of May, the exact condition of the several funds under their control to the first day of said month. The treasurer shall keep the account of the several sinking funds in a book to be kept for the purpose, in such form and manner as the said commissioners shall direct, and he shall furnish to the auditor of accounts, annually, on or before the first day of June, a statement of the condition of the several funds on the 30th day of April preceding, which statement shall be printed in the annual report of the said auditor of accounts.

Semi-annual
reports.
Ibid.

SECT. 31. The city council shall make appropriations, annually, for the payment of the treasurer and secretary of said commissioners, and for such clerical and office expenses as may be necessary for the proper care and management of the several funds; said appropriations to be expended under the direction and approval of the committee on finance.

Payment of ex-
penses of offi-
cers.
Ibid.

NOTE

CONCERNING THE LIABILITY OF THE INHABITANTS FOR DEBTS CONTRACTED
BY THE CITY.

When judgment is recovered against the inhabitants of a city, town, parish, or school district, execution may be levied upon the property of any inhabitant thereof, as each inhabitant must be considered a party to the suit. 5 Dane Ab. 158; 7 Mass. 187; 14 Mass. 216; 19 Pick. 564; 6 Met. 546.

OFFICE OF THE CITY SOLICITOR,
BOSTON, May 18, 1852.

In the opinion of the undersigned, the private estates of the citizens of Boston are liable for debts lawfully contracted by the city, and whenever judgment is rendered against the said city on account of any such debt, the execution may be levied upon the property of any inhabitant.

P. W. CHANDLER,
City Solicitor.

Upon the back of this opinion are the following endorsements: —

The foregoing opinion of Mr. Chandler, the City Solicitor, is undoubtedly in conformity with the laws of Massachusetts.

DANIEL WEBSTER.

Boston, Oct. 13, 1875.

I concur in the within-recited opinion. The law referred to has undergone no change since the opinion was given, and is well settled.

J. P. HEALY,
City Solicitor.

FIRE-ARMS, BONFIRES, AND BRICK-KILNS.

ORDINANCES.¹

SECTION 1. No person shall fire or discharge any gun, fowling-piece, or fire-arm within the limits of the city of Boston, under a penalty for every such offence of not less than one dollar, nor more than fifty dollars: *provided, however*, that this section shall not apply to the use of such weapons at any military exercise or review, duly authorized by the military authority of the commonwealth, or by the city council, or the mayor of the city of Boston, or in the lawful defence of the person, family, or property of any citizen.²

Firing any gun, etc., within the city, penalty for. July 22, 1850. July 19, 1872.

Proviso.

SECT. 2. If any person shall make any bonfire or other fire in any of the streets, squares, commons, lanes, or alleys, or on any wharf within the city, without the license of the board of aldermen, he shall be punished by a fine not exceeding fifty dollars.

Bonfires, etc., penalty for making any. July 22, 1850.

SECT. 3. No person shall erect, make, or fire, or cause to be erected, made, or fired, within any part of the city, any brick-kiln, or lime-kiln, without the license of the board of aldermen, under a pen-

Brick-kiln, etc., penalty for erecting, making, or firing any. Ibid.

¹ An ordinance in relation to fire-arms, bonfires, and brick-kilns, passed July 22, 1850. An ordinance to amend an ordinance in relation to fire-arms, bonfires and brick-kilns, passed July 19, 1872; published in daily papers July 27, 29, for two weeks.

² For provisions in relation to the discharge of artillery on the common and other public grounds, see ordinance under title of "Parks," p. 595.

July 22, 1850.

ality of not less than one dollar, nor more than fifty dollars, and a like sum for every week he shall maintain such kiln after notice to remove the same.

FIRE DEPARTMENT.

STATUTES.

City council
may establish a
fire department.
May make pro-
visions respect-
ing the same.
1850, c. 262, § 1.

1. ¹ The city council of the city of Boston may establish a fire department for said city, consisting of so many engineers and other officers, and so many enginemen and other members, as the city council, by ordinance, may from time to time prescribe; and said city council shall have authority to make such provisions in regard to the time and mode of appointment, and the occasion and mode of removal of either such officers or members, to make such requisitions in respect to their qualifications and period of service, to define their office and duties, to fix and pay such compensation for their services, and, in general, to make such regulations in regard to their conduct and government, and to the management and conduct of fires, and persons attending at fires, subject to the penalties provided for the breach of the city by-laws, as they shall deem expedient: *provided*, that the appointment of enginemen, hosemen, and hook and ladder men shall be made by the mayor and aldermen exclusively, unless the said city council shall by ordinance otherwise provide for their appointment.

Appointment of
enginemen, etc.
1873, c. 374.

Powers, etc., of
city council may
be exercised by
means of any
board, etc.
1850, c. 262, § 2.

2. The powers and duties mentioned in the preceding section, or any of them, may be exercised and carried into effect by the said city council in any manner which they may prescribe, and through the agency of any persons, or any board or boards, to whom they may delegate the same.

Engineers, etc.,
to have the pow-
er and duties of
firewards.
Ibid. § 3.

3. The engineers or other officers of the department, so appointed as aforesaid, shall have the same authority, in regard to the prevention and extinguishment of fires, and the performance

¹ This act (1850, c. 262) was subject to acceptance by the city council. It was accepted June 4, 1850.

of the other offices and duties now incumbent upon firewards, as are now conferred upon firewards by the Revised Statutes, or the special acts relating to the city of Boston now in force.¹ They shall also have authority, in compliance with any ordinance of said city, to make an examination of places where shavings and other combustible materials are collected or deposited, and to require the removal of such materials, or the adoption of suitable safeguards against fire. And said city council are hereby authorized to make suitable ordinances upon this latter subject-matter, under the penalties enacted in the city charter.

1850, c. 262, § 3.
109 Mass. 277.

To examine
places where
shavings, etc.,
are collected,
etc.

Ordinances may
be made, etc.

4. The officers and men of the fire department of the city of Boston, with the engines and apparatus thereof, shall have the right of way, while going to a fire upon any alarm thereof, through any street, lane or alley in the said city, subject to such rules and regulations as the city council may prescribe. Whoever wilfully and maliciously obstructs or retards the passage of such engines and apparatus while so going to a fire as aforesaid, shall be punished by imprisonment in the jail not exceeding three months, or by fine not exceeding fifty dollars.

Fire department
to have right of
way in streets
in Boston.
1873, c. 374.

5. Whoever wilfully and maliciously obstructs or retards the passage of any engine or other apparatus of any fire department, while going to a fire through any street, lane, alley or other way, shall be punished by imprisonment in the house of correction not exceeding three months, or by fine not exceeding fifty dollars.

Penalty for wil-
ful obstruction
of fire-engines.
1874, c. 37.

6. All officers and members of the fire department shall be exempted from military duty, by forthwith filing with the assessors of the city a certificate that they are enginemen, or members of the fire department, signed by the mayor and aldermen; or from serving as jurors, or constables, during the time of their employment in said department.

Exemption of
members.
1850, c. 262, § 4.
G. S. c. 132, § 2.
1866, c. 219, § 11.

7. The city council of Boston are hereby authorized, whenever and as often as they shall deem it expedient, to appropriate any sum or sums of money, in the way that may be judged by said

City council
may appropri-
ate money for
relief of mem-
bers injured,
etc.

¹ A city is not liable for a personal injury resulting from the negligence of officers and members of its fire department in performing their duties, although the department was established and is regulated under a special statute which by its terms required acceptance by the city council before it took effect. 104 Mass. 87, 94.

1850, c. 262, § 5. city council most advisable, for the relief or indemnity of any
 1854, c. 375. officer or member of the fire department who may sustain corporal injury, or contract sickness in the discharge of his duty, or consequent thereon.¹

May expend
 \$3,000 annually
 for relief of dis-
 abled firemen.
 1873, c. 258.

8. The city of Boston may expend a sum not exceeding three thousand dollars annually, for the relief of firemen disabled, and of the families of firemen killed, in the service of the city.

Engineers shall
 attend fires.
 G. S. c. 24, § 3.
 1850, c. 262, § 3.
 Engineers, etc.,
 may order build-
 ings to be pulled
 down, etc.

9. When a fire breaks out the engineers shall immediately repair thereto, and shall carry a suitable staff or badge of their office.

G. S. c. 24, § 4.
 1850, c. 262, § 3.
 5 Cush. 269.
 11 Cush. 433.
 11 Allen, 507.
 104 Mass. 94.

10. The engineers, or any three of them present at a place in immediate danger from fire, or in their absence two or more of the civil officers present, or in their absence two or more of the chief military officers of the place present, shall have power to direct the pulling down or demolishing of any such house or building as they shall judge necessary to be pulled down or demolished, in order to prevent the further spreading of the fire.²

Engineers may
 give orders to
 enginemen and
 others, etc.
 G. S. c. 24, § 7.
 1850, c. 262, § 3.

11. They may direct the stations and operations of the enginemen with their engines, and of all other persons, for the purpose of extinguishing the fire; and whoever refuses or neglects to obey such orders shall forfeit for each offence a sum not exceeding ten dollars.

Engineer of fire
 department to
 have sole power
 of demolishing
 buildings.
 1873, c. 201.

12. By an act passed April 16, 1873, it was provided that the engineer of a fire department in command at a fire shall, to the exclusion of all other persons, have the power conferred upon firewards by section ten of this digest, — that is, the fourth section of the twenty-fourth chapter of the General Statutes.³

Engineers, etc.,
 may command
 assistance.
 G. S. c. 24, § 6.
 1850, c. 262, § 3.

13. Engineers or other officers may, during the continuance of a fire, require assistance for extinguishing the same, and removing furniture, goods, or merchandise from a building on fire or in danger thereof; and may appoint guards to secure the same. They may also require assistance for pulling down or demolishing any house or building when they judge it necessary; and may suppress all tumults and disorders at such fire.

See 109 Mass.
 277.

¹ The Stat. of 1850, c. 262, repealed Stat. 1822, c. 52; 1819, c. 104; 1825, c. 52; 1826, c. 97; 1828, c. 123; and 1831, c. 52.

² See opinion of Mr. Justice Clifford in case of Alex. G. Bowditch and others *vs.* City of Boston, Circuit Court, U. S., printed in *Daily Advertiser* Sept. 4, 1876.

³ Accepted by the city council, June 23, 1873.

14. If such pulling down or demolishing of a house or building is the means of stopping the fire, or if the fire stops before it comes to the same, the owner shall be entitled to recover a reasonable compensation from the city or town; but when such building is that in which the fire first broke out, the owner shall receive no compensation.

Owners to be indemnified, except, etc.

G. S. c. 24, § 5.
1850, c. 262, § 3.
8 Mct. 462.

5 Cush. 269.

11 Cush. 433.

11 Allen, 507.

15. Whoever purloins, embezzles, conveys away, or conceals, any furniture, goods, or chattels, merchandise or effects of persons whose houses or buildings are on fire or endangered thereby, and does not within two days restore or give notice thereof to the owner, if known, or, if unknown, to one of the firewards, mayor and aldermen, or selectmen of the place, shall be deemed guilty of larceny.

Embezzling, etc., of property, at a fire, to be deemed larceny.

G. S. c. 24, § 8.

16. Whoever wantonly or maliciously injures a fire engine, or the apparatus belonging thereto, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, and be further ordered to recognize with sufficient surety or sureties for his good behavior during such term as the court shall order.

Penalty for injuring fire engines.

Ibid. § 22.

17. It shall be lawful for any one or more of the engineers aforesaid to require and compel the assistance of all or any of the inhabitants of the city, and any other persons who shall be present as spectators of any fire; and in any suit or prosecution therefor, it shall be lawful for them to plead the general issue, and give the statute in evidence; and if any persons shall disobey the lawful and reasonable command of any engineer or engineers, to aid in extinguishing such fire, or in rescuing property from destruction thereby, such person, so offending, shall be liable to a fine not exceeding twenty dollars, to be recovered in the manner provided in the twenty-fourth section.

Engineers may require and compel assistance.

1817, c. 171, § 13.
1850, c. 262, § 3.

See 1852, c. 312, § 12.

Penalty for disobeying.

See § 24, *post*.

18. Whoever is concerned in causing or making a bonfire within ten rods of any house or building shall be punished by fine not exceeding twenty dollars, or by imprisonment not exceeding one month.

Bonfires, penalty for making.
G. S. c. 164, § 12

19. Whoever, without reasonable cause, by outcry or the ringing of bells, or otherwise, makes or circulates, or causes to be made or circulated, any false alarm of fire, shall be punished by fine not exceeding fifty dollars.

False alarms of fire, how punished.

Ibid. § 13.

Cocoa not to be
roasted except
in licensed Pen-
buildings. alty.
1817, c. 171, § 6.
1850, c. 262, § 3.

20. If any person or persons shall, within the city of Boston, roast, or cause to be roasted, any cocoa, for the purpose of manufacturing the same into chocolate, in any building whatever, excepting such as may or shall be licensed for that purpose by the major part of the engineers of the city aforesaid, he, she, or they, shall forfeit and pay for every such offence a sum not exceeding five hundred dollars, nor less than two hundred dollars.

Tar-kettles and
other boilers,
how to be con-
structed.
1817, c. 171, § 9.

21. Every tar-kettle which shall be made use of in the city for the purpose of boiling tar for the use of any rope-walk, and every kettle, boiler, or copper for the use of any caulker, graver, ship carpenter, tallow chandler, soap boiler, painter, or other like artificer, shall be so fixed as to prevent all communication whatsoever between the contents of such kettle, boiler, or copper, and the fire. And the fireplace under every such tar, or other, kettle, boiler, or copper, shall be constructed with an arch built over the same, and secured by an iron door in such manner as to enclose the fire therein; and every person who shall erect any tar-kettle or other kettle, boiler or copper, or use the same for any or either of the purposes aforesaid, contrary to the provisions of this act, shall for every such offence forfeit and pay a sum not exceeding three hundred dollars, nor less than fifty dollars, according to the degree and aggravation of the same.

Penalty.

Penalty for
carrying fire
through the
streets, etc.,
smoking pipes,
cigars, etc.
1817, c. 171, § 10.
1850, c. 262, § 3.
12 Met. 231.

22. Every person who shall carry any fire through the streets, lanes, or on any wharves in the city, except in some covered vessel, or who shall kindle a fire in any of the places aforesaid without the permission therefor in writing of one or more of the engineers aforesaid, or shall smoke or have in his or her possession any lighted pipe or cigar in any street, lane, or passage-way, or on any wharf in said city, shall forfeit and pay for each and every offence the sum of two dollars, to be recovered of the person so offending, or of his parent, guardian, master, or mistress.

Penalty for hav-
ing lighted pipe,
cigar, candle,
etc., in any rope-
walk, barn, etc.
1817, c. 171, § 11.
12 Met. 231.

23. If any person shall have in his or her possession in any rope-walk, or in any barn or stable within the city, any fire, lighted pipe, or cigar, lighted candle or lamp, except such candle or lamp is kept in a secure lantern, the person so offending shall forfeit and pay for each offence a sum not exceeding one hundred dollars, nor less than twenty dollars.

Recovery of
penalties.
1817, c. 171, § 12.

24. All and any of the penalties which are given in and by the four preceding sections may be recovered by indictment,

information, or complaint, in any court proper to try the same; and in such indictment, information, or complaint, it shall not be necessary to set forth any more of said sections than so much thereof as relates to and is necessary truly and substantially to describe the offence alleged to have been committed. And it shall be the duty of each and every one of said engineers, and they and each of them are hereby required to inquire after all offences which shall come to their knowledge, and which shall be committed against the true intent and meaning of said sections, and shall cause the same to be duly prosecuted.

G. S. c. 171, § 16.
3 Pick. 462.

Duty of engineers to prosecute.
G. S. c. 164, § 12.
1850, c. 262, § 3.

25. By an act passed March 6, 1847, and re-enacted in the General Statutes, the inhabitants of any town and the government of any city in this commonwealth may order that no gun-cotton, or other substance prepared like it for explosion, shall be kept within the limits of such town or city, excepting under the regulations and penalties applicable by law to gunpowder; and if it shall be considered necessary for public safety, they may restrict the quantity to be so kept to one-fifth of the weight of gunpowder allowed by law in each case provided for.

Gun-cotton, and other like substances, power to regulate the keeping of.
G. S. c. 88, § 48.
1847, c. 51.

26. The inhabitants of any town, and the city council of any city in this commonwealth, may make and adopt such rules and regulations in relation to the storage and sale within the limits of such town or city, of camphene, or any similar explosive or inflammable fluid, as they may deem reasonable, and may annex penalties to any breach of such rules and regulations not exceeding twenty dollars for any one offence.¹

Camphene, city may make rules in relation to storage and sale of.
G. S. c. 88, § 61.

27. It shall not be lawful for any person or persons to keep or sell any fireworks within the city of Boston, in any quantity, without first having obtained from the chief engineer of the fire department of said city a license therefor, signed by the chief engineer, or by the secretary of the board of engineers, on which shall be written or printed a copy of the rules and regulations by them established relative to the keeping, selling, or storage of fireworks within said city; and every such license shall be in force until the first day of May next ensuing the date thereof, unless sooner annulled by the board of engineers, and no longer; but such license may, prior to the expiration of that term, be renewed

Not lawful to keep fireworks without license.
1853, c. 154, § 1.

¹ See "Petroleum," p. 600; also, "Gunpowder," p. 344.

1853, c. 154, § 1. by the chief engineer or the said secretary, from year to year, by indorsement thereon : *provided, always*, that the board of engineers may rescind any such license, if in their opinion the person or persons have disobeyed the law, or infringed on any rules or regulations established by the board of engineers; and every person who receives a license to sell fireworks, as aforesaid, shall pay for the same the sum of one dollar, and the same sum for the renewal thereof; and all such licenses shall expire on the first day of May, annually, and all moneys received for licenses shall be paid to the board of engineers, for the purpose of defraying the expenses of carrying this act into execution.

May be rescinded.

Penalty.
Ibid. § 2.

28. Any person or persons who have for sale, or keep in possession, any fireworks within the city of Boston contrary to the rules and regulations established by the board of engineers herein mentioned, or who shall sell any fireworks in said city without first having obtained from the said chief engineer, or his secretary, a license as aforesaid, shall forfeit a sum not less than fifteen, nor more than fifty, dollars for each offence.

Fire clubs not to be established, unless, etc.
G. S. c. 24, § 49.
Penalty for joining without permission.
Ibid. § 50.

29. No association,¹ society, or club organized as firemen shall be allowed in any city or town, except by the written permission of the mayor and aldermen, or selectmen.

30. Whoever joins, belongs to, or assembles with such association, society or club existing without such permission, shall be punished by fine not less than five, nor more than one hundred, dollars, or by imprisonment in the house of correction for a term not exceeding three months.

Two preceding sections to be in force, only where, etc.
Ibid. § 51.
Cutting, etc., bell rope, engine, etc., within twenty-four hours of fire.
Ibid. c. 161, § 8.

31. The provisions of the two preceding sections shall be in force in those cities and towns only which have adopted or may adopt the same.²

32. Whoever, within twenty-four hours prior to the burning of a building or other property, wilfully or maliciously cuts or removes any bell-rope in the vicinity of such building or property, or cuts, injures, or destroys any engine or hose or other apparatus

¹ For the incorporation of the Charitable Association of the Boston Fire Department, and subsequent acts respecting the same, see 1829, c. 44; 1838, c. 131; 1874, c. 343.

² It does not appear that the provisions of the sections referred to were ever adopted by the city council of Boston.

belonging to an engine in said vicinity, shall be deemed guilty of the burning, as accessory before the fact, and be punished accordingly. G. S. c. 161, § 8.

33. Whoever, during the burning of a building or other property, wilfully and maliciously cuts or removes any bell-rope in the vicinity of such building or property, or otherwise prevents an alarm being given, or cuts, injures, or destroys an engine or hose or other apparatus belonging to any engine in said vicinity, or otherwise wilfully and maliciously prevents or obstructs the extinguishing of any fire, shall be deemed guilty of the burning, as accessory after the fact, and be punished by imprisonment in the state prison not exceeding seven years, or in the jail not exceeding three years, or by fine not exceeding one thousand dollars. Cutting same, at time of fire, or preventing alarm or extinguishing fire. Ibid. § 9.

34. Whoever steals in a building that is on fire, or steals any property removed in consequence of an alarm caused by fire, shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding five hundred dollars, and imprisonment in the jail not exceeding two years. Stealing at a fire. Ibid. § 16. See c. 116, § 14; c. 120, § 41.

FIRE INQUESTS.

35. When property is destroyed by fire, and a complaint is subscribed and sworn to by any person before any police court, or any municipal court, or any trial justice, alleging that reasonable grounds exist for believing that the fire was caused by design, and a majority of the mayor and aldermen or selectmen of the city or town respectively in which said property is situated certify in writing, that in their opinion the same is a proper case for investigation, such court or justice shall forthwith issue a warrant to a constable of the place where the property was destroyed, requiring him forthwith to summon six good and lawful men of the county to appear before the court, or justice, at a time and place expressed in the warrant, to inquire when and by what means the fire originated; which warrant shall be served and returned in the manner prescribed in section three of chapter one hundred and seventy-five of the General Statutes; and the constables and jurors shall be subject to the penalties therein specified for similar neglects. If any person so summoned does not appear, the constable shall, Jury of inquest to be called. 1867, c. 303, § 1. 1873, c. 283. 1874, c. 267. 98 Mass. 491. 101 Mass. 439.

1867, c. 303, § 1. by order of the justice or court, return some person from the bystanders to complete the number.

Oath of jurors. 36. The justice or court shall, in view of the spot on which the
Ibid. § 2. property was destroyed, administer to the persons thus summoned or returned the following oath: "You solemnly swear, that you will diligently inquire and true presentment make, on behalf of this commonwealth, when and by what means the fire which has here occurred was caused, and that you will return a true inquest according to your knowledge and such evidence as shall be laid before you. So help you, God."

Witnesses to attend. 37. The justice or court may issue subpœnas for witnesses
Ibid. § 3. returnable forthwith at a time and place therein set forth. Their attendance may be enforced in like manner as if they had been subpoenaed in behalf of the commonwealth.

Oath of witnesses. 38. An oath to the following effect shall be administered to
Ibid. § 4. such witnesses: "You solemnly swear, that the evidence which you shall give to the inquest, concerning the origin of the fire of which inquiry is now to be made, shall be the truth, the whole truth, and nothing but the truth. So help you, God."

Testimony, how taken. 39. The testimony shall be reduced to writing by the presiding
Ibid. § 5. justice, or some person by his direction, and subscribed by the witnesses.

Inquisition, how filed. 40. The jury, after hearing the testimony and making all need-
Ibid. § 6. ful inquiry, shall draw up and deliver to the justice or court their inquisition under their hands, in which they shall find and certify when and by what means the fire was caused; and said inquisition and testimony thus subscribed shall, within one week thereafter, be filed by the magistrate with the clerk of the courts for the county, or in the county of Suffolk with the clerk of the municipal court.

Fees and expenses at fire inquests to be paid by city or town. 41. The fees of the magistrate and the expenses of any inquisition hereafter held under the provisions of chapter three hundred and three of the acts of the year eighteen hundred and sixty-seven [being the six preceding sections] shall be returned to the mayor and aldermen or selectmen of the city or town where the property was destroyed, and being audited and certified by them shall be paid by such city or town.

1874, c. 267.

PROTECTIVE DEPARTMENT.

42. By an act passed March 10, 1874, certain offices of fire insurance companies in Boston were incorporated under the name of the "Boston Protective Department," with power to provide and maintain a corps of men, with proper officers, whose duty it shall be, so far as practicable, to discover and prevent fires, and whose appointment shall be subject to the approval of the board of fire commissioners; also to provide suitable apparatus to save and preserve life and property at or after a fire. Power is granted to such corps and its officers to enter any building on fire, or which, in their judgment, is immediately exposed to, or in danger of taking fire from other burning buildings, to protect and save life and property therein, and to remove such property or any part thereof at or immediately after a fire: *provided, however*, that nothing in the act establishing this corps shall be so construed as to lessen in any way the authority of the officers or members of the Boston fire department, or to warrant or justify any interference with them in the performance of their duties, nor in any way to justify the owner of any building or personal property in the abandonment of his property.

Boston protective department established.
1874, c. 61, § 1.

Duties.
Ibid. § 2.

43. The officers and men of the Boston protective department, with their teams and apparatus, shall have the right of way, while going to a fire, through any street, lane or alley in the city of Boston, subject to such rules and regulations as the city council and the fire commissioners may prescribe, and subject also to the rights of the Boston fire department; and any violation of the street rights of the Boston protective department shall be punished in the same manner as is provided for the punishment of violations of the rights of the Boston fire department in chapter three hundred and seventy-four of the acts of eighteen hundred and seventy-three [§ 4 of the foregoing digest].

Right of way through the streets while going to a fire.
1874, c. 61, § 3.

FIRE-INSURANCE DISTRICTS.¹

Cities and towns
of more than
4,000 inhabitants
to be divided
into fire insur-
ance districts.
1872, c. 375, § 18.

44. The mayor and aldermen of the several cities, and the selectmen of towns having more than four thousand inhabitants, shall before the first day of October, in the year eighteen hundred and seventy-three, divide their respective cities and towns into fire-insurance districts, and immediately thereafter file plans and specifications thereof with the insurance commissioner, and the same shall be subject to his approval; and if he disapproves the same, the mayor and aldermen or selectmen shall forthwith re-district such city or town in conformity to his requirement. And no company or association transacting the business of fire insurance in this commonwealth shall, after said first day of October, take or have at risk on property other than dwelling-houses, farm buildings and their contents, in any town or such fire insurance district of a city or town therein, an amount exceeding its net assets available for the payment of losses in Massachusetts; and in computing the assets of such company or association insuring property upon the mutual principle, its premium notes shall be included. When from any cause the net assets, as aforesaid, of any such company or association, shall be reduced to a sum less than the amount taken or held at risk in any town or any such fire-insurance district as provided in this section, such company or association shall forthwith either cancel and return to the holder the unearned portion of the premium upon policies upon property in such territory to an amount equal to the difference between the net assets and the amount taken or held at risk, as aforesaid, or effect reinsurance upon such property for a like sum; and no such cancellation shall take place except after notice to the holder of the policy. Every such company or association shall annually, on or before the fifteenth day of January, return to the insurance commissioner a sworn statement of the amount taken or held at risk in each town or fire-insurance district of a city in this commonwealth, on the thirty-first day of December next preceding. The insurance commissioner

Annual returns
to be made to
commissioner.

¹ See districts established by mayor and aldermen May 13, 1873, and approved by insurance commissioner May 14, 1873, — printed in *Municipal Registers of 1873-74-75*.

may, whenever he deems expedient, require of said companies or associations such a statement, or any part thereof; he may also require such other information, and adopt such rules and regulations, as he may deem proper and necessary to procure reliable information upon this subject. For every policy issued in violation of the provisions of this section by an insurance company incorporated under the laws of this commonwealth, the president and secretary thereof shall, severally, upon conviction, be punished by a fine of fifty dollars. Any agent of a company or association not incorporated under the laws of this commonwealth, but duly authorized to transact business therein, shall upon conviction be punished by a fine of fifty dollars for each policy issued in violation of the provisions of this section, and upon a second conviction his certificate of agency or license shall be revoked by the insurance commissioner.

1872, c. 375, § 18.
Penalty.

ORDINANCES.¹

SECTION 1. The fire department of the city of Boston shall consist of a board of three fire commissioners, a chief engineer, a superintendent of fire alarms, thirteen assistant engineers, and other officers, enginemen, telegraph operators, and other members, to the number of seven hundred men.

Fire department officers.
Oct. 24, 1873.
April 1, 1874.

SECT. 2. In the month of April, annually, the mayor shall appoint, subject to the approval and confirmation of the city council, one person to be a member of the board of fire commissioners, to hold his office for the term of three years from the first Monday of the following May, unless sooner removed. The members of said board so appointed

Board of fire commissioners.
Oct. 24, 1873.

¹ An ordinance to establish a fire department, passed Oct. 24, 1873. An ordinance in relation to the fire-alarm telegraph, passed Dec. 20, 1873. An ordinance to amend an ordinance to establish a fire department, passed April 1, 1874.

Oct. 24, 1873. shall devote their time to the duties of the office, and shall not actively engage in any other business. Any member shall, at any time, be subject to removal by the mayor for cause, and all vacancies occurring in said board, from any cause, shall be filled in the same manner in which the original appointments are herein directed to be made. No member of either branch of the city council shall hold the office of fire commissioner. For their services the fire commissioners shall receive such compensation as the city council may from time to time determine.

Compensation.

Organization of
commissioners.
Ibid.

SECT. 3. The said board shall organize annually on the first Monday of May, by the choice of one of their members as chairman. They shall also choose a clerk, who shall not be a member of the board; and they shall make such rules and regulations for their own government and for the government of all other offices and members of the fire department, including the fire-alarm telegraph, as they may deem expedient, provided that said rules and regulations shall not be inconsistent with the ordinances of the city.¹

Duties of com-
missioners.
Ibid.

SECT. 4. The duty of extinguishing fires and protecting life and property in case of fire shall, within the city of Boston, be intrusted to the said board of commissioners; and, to enable them to perform that duty in the most efficient manner, the said board is hereby authorized to appoint all other officers and

¹ The records and files of the department are open to public inspection. See title "Records," p. 659.

members of the fire department, including the fire-^{Oct. 24, 1873.} alarm telegraph, and fix their compensation; to discharge any of said officers or members at any time for cause; to divide the city into fire districts; to organize companies and battalions to work the apparatus; to establish a fire patrol by detail from the permanent force of the department, which shall render such services in connection with the police and the department for the survey and inspection of buildings as the said commissioners may direct; to purchase horses, steam-engines, extinguishers, hose-carriages, hook-and-ladder carriages, and all other apparatus and supplies necessary for the complete equipment of the said department, or conducive to the proper performance of its duties; *provided, however*, that the expenditures for the purposes herein named shall not exceed in the aggregate the sums previously appropriated by the city council for the maintenance of said fire department.

SECT. 5. The said board of fire commissioners shall, annually, on or before the fifteenth day of February, send to the city auditor an estimate in detail of the appropriations required for the maintenance of the fire department during the next financial year. All bills for expenditures from the appropriations for the fire department shall be drawn for by the said board, examined by the auditor, and approved by the committee on accounts, before they are paid by the treasurer.

Estimates of
expenditures to
be made annually.
Ibid.

Monthly report
to city council.
Oct. 24, 1873.

SECT. 6. The said board shall, on or before the tenth day of each month, present to the city council a report made up to and including the last day of the preceding month, containing a chronological statement of the number of fires in such month, with the causes thereof, a general description of the property destroyed or injured at each fire, with the names of the owners or occupants and the amount of insurance, if any, specifying the portion of the force and apparatus called into action at each fire, with the name of the officer in command; also a statement of all fatal or serious accidents to members of the department or others on account of fires, or alarms of fires, during the month, together with such other information or suggestions as they may deem proper. They shall also, annually, in the month of May or June, present to the city council a report made up to, and including, the thirtieth day of the preceding April, containing, in addition to a consolidated statement of the facts contained in the monthly reports of the preceding year, a list of the causes of fire, alphabetically arranged, a statement of the income and expenditures on account of the department during the preceding year, a schedule of all the property belonging to the department, with a statement as to its condition on the date of the report, and an estimate of its value; also a statement of the number and location of the fire-alarm boxes, together with such other information or suggestions as they may deem proper.

Annual report.

Powers and duties of engineers.
Ibid.

SECT. 7. The chief engineer and the assistant engineers appointed by the fire commissioners, as

hereinbefore provided, shall constitute the board of Oct. 24, 1873. engineers of the city of Boston, and shall have and exercise all the powers conferred upon such officers by the statutes of the commonwealth and by the ordinance in relation to the manufacture, storage and sale of petroleum, camphene, and burning fluids. And they shall also have authority, under the direction of the fire commissioners, to inquire for and examine into all shops and other places where shavings or other such combustible materials are collected or deposited, and report to said commissioners from time to time the condition in this respect of the district to which they are assigned; and whenever, in the opinion of said commissioners, the same may endanger the security of the city from fires, they shall direct the tenant or occupant of said shops or other places to remove such shavings or other combustible materials; and in case of such tenant's or occupant's neglect or refusal so to do, they shall cause the same to be removed at the expense of such tenant or occupant, who shall, in addition, be liable to a penalty of not less than five nor more than fifty dollars for such neglect or refusal; and any person who shall obstruct the said commissioners or engineers, or any of them, in carrying out the provisions of this section, shall also be liable to a penalty of not less than five nor more than fifty dollars.

SECT. 8. It shall be the duty of the members of the police department to aid the fire department by giving alarms in case of fire in such manner as the fire commissioners may direct, and in clearing the streets

Police department to aid fire department.
Ibid.

Oct. 24, 1873.

or grounds in the immediate vicinity of the fire so that the members of the fire department shall not be hindered or obstructed in the performance of their duties. If any policeman refuses or neglects to give an alarm, as directed in the manner aforesaid, or refuses to obey the orders of the chief officer in command at a fire, he shall forfeit and pay a fine of not less than five nor more than twenty dollars.

Uniforms and
badges.
Ibid.

SECT. 9. The said board of fire commissioners shall make suitable regulations, under which the officers and men of the fire department shall be required to wear any appropriate uniform and badge, by which, in case of fire and at other times, the authority and relations of such officers and men in said department may be known, as the exigency of their duties may require.

Committee on
fire department.
Ibid.

SECT. 10. There shall be appointed annually, in the month of January, a joint committee of the city council on the fire department, consisting of two members of the board of aldermen and three members of the common council. It shall be the duty of said committee to examine, as often as once in each month, the records and accounts of the board of commissioners on the fire department, and also to examine all applications for appropriations for the said department, and report thereon to the city council.

Alarm boxes
and wires not to
be tampered
with.

SECT. 11. No person shall open any of the signal boxes connected with the fire-alarm telegraph for the purpose of giving or causing to be given a false

alarm of fire, or interfere in any way with said boxes by breaking, cutting, injuring, or defacing the same, or pulling the slides therein, except in case of fire; or, without authority, opening, tampering, or meddling with said boxes or any part or parts thereof, or with the fire-alarm telegraph wires, or anything connected therewith.

Dec. 20, 1873.

SECT. 12. Any person or persons found guilty of violating any of the provisions of the foregoing section shall forfeit and pay a fine of not less than five dollars nor more than fifty dollars for each offence.

Penalties.
Ibid.

FUEL.

ORDINANCES.¹

SECTION 1. All contracts for wood, bark, coal, and other fuel for the use of the city, in each and every one of its respective branches and departments, as well for the use of the public schools and primary schools, as for all other public buildings and offices, excepting the several institutions at South Boston and Deer island and the city hospital, shall be made by a committee of the city council, who shall advertise, in the public newspapers in which the city ordinances are printed, for sealed proposals for furnishing the same, at least one week previous to making any contract for the same, and the proposals shall contain,

Committee of
city council
shall make con-
tracts for fuel.
May 8, 1843.
Feb. 9, 1846.
May 1, 1866.

Shall advertise
for sealed pro-
posals.

¹ An ordinance regulating the purchase of fuel for the use of the city, passed May 8, 1843, and February 9, 1846; amended May 1, 1866, and June 30, 1871.

May 8, 1843.
Feb. 9, 1846.
May 1, 1866.

separately, and distinctly, the terms for which each particular description of fuel will be furnished; and such proposals being considered, shall be accepted, or rejected, as may be deemed advisable by said committee; and the contract so made shall provide for the delivery of such wood, bark, coal and other fuel, at such different times and in such places as may be required by the superintendent of public buildings during the year; and such contract shall be made annually, between the months of May and September.

Fuel shall be weighed or measured.
May 8, 1843.
June 30, 1871.
Superintendent of public buildings shall attend to delivery, etc.

SECT. 2. All fuel of every description contracted for, shall, previous to the delivery thereof, be weighed or measured by a weigher or measurer designated for that purpose by the committee; and the superintendent of public buildings shall attend to the delivery and reception of the same, and give certificates therefor, as the same is delivered, so that the committee may know whether the proper quantity and quality have been received; and the chairman of said committee shall certify the bills of the same previous to the payment thereof.

GUNPOWDER.

STATUTES.

Taking loaded arms into houses, prohibited, under penalty of ten pounds.

1. ¹If any person shall take into any dwelling-house, stable, barn, out-house, warehouse, store, shop, or other building within the city of Boston, any cannon, swivel, mortar, howitzer, cohorn, or fire-arm, loaded with or having gunpowder in the same, or

¹ The first two sections printed here were passed March 1st, 1783, although given in the statutes as c. 46 of the statutes of 1782.

Concerning transportation of nitro-glycerine and similar explosives see St. 1871, c. 6.

shall receive into any dwelling-house, stable, barn, out-house store, warehouse, shop or other building within said city, any bomb, grenade, or other iron shell, charged with or having gunpowder in the same, such person shall forfeit and pay the sum of ten pounds, to be recovered at the suit of the engineers in an action of debt before any court proper to try the same; one moiety thereof to the use of said engineers and the other moiety to the support of the poor of said city.

1782, c. 46, § 1.
1850, c. 262, § 3.

2. All cannons, swivels, mortars, howitzers, cohorns, fire-arms, bombs, grenades, and iron shells of any kind that shall be found in any dwelling-house, out-house, stable, barn, store, warehouse, shop, or other building, charged with or having in them any gunpowder, shall be liable to be seized by either of the engineers of said city; and upon complaint made by the said engineers to the court of common pleas,¹ of such cannon, swivels, mortars, or howitzers, being so found, the court shall proceed to try the merits of such complaint by a jury; and if the jury shall find such complaint supported, such cannon, swivel, mortar, or howitzer shall be adjudged forfeit, and sold at public auction, and one-half of the proceeds thereof shall be disposed of to the engineers, and the other half to the use of the poor of the city of Boston. And when any fire-arms, or any bomb, grenade, or other shell shall be found in any house, out-house, barn, stable, store, warehouse, shop, or other building, so charged or having gunpowder in the same, the same shall be liable to be seized in manner aforesaid; and, on complaint thereof made and supported before a justice of the peace, shall be sold and disposed of as is above provided for cannon.

Loaded arms in houses may be seized by engineers.

1782, c. 46, § 2.
1850, c. 262, § 3.

To be sold at public auction if adjudged forfeit upon their complaint.

3. No commissary, or any other officer or officers, or any person or persons in the service of the United States, or acting in the department of commissary or quarter-master general of this commonwealth, shall be permitted to have, keep or possess within the city of Boston, a greater quantity of gunpowder than four hundred pounds; and the powder so had and possessed within the said city shall be kept in a place approved of by the engineers of the said city, either under ground in a vault, or in a stone or brick building secured against explosion by fire.

Powder, how much may be kept by any United States or State officer, and where.

1813, c. 143, § 1.
1850, c. 262, § 3.

¹ Now the superior court.

Powder kept
contrary to
above provision,
may be seized
by engineers
and sold.

1813, c. 143, § 2.

1850, c. 262, § 3.

See § 15.

Gunpowder ex-
ceeding one
pound not to be
kept within two
hundred yards
of any wharf, or
on the main-
land.

1833, c. 151, § 1.

Forfeiture.

No gunpowder
to be sold with-
in the city, with-
out license from
engineers.
Ibid. § 2.

Form of license
to contain rules
and regulations.

Time in which
it shall continue
in force.

Engineers may
rescind same.

4. Any gunpowder which shall be found in the possession of, or which may be had or kept within the city of Boston by any officer or officers, or any person or persons whatsoever acting in behalf or under the authority of the United States, or by any agent or servant of such officers or persons, and all gunpowder possessed, had, or kept by any officer of the commissary or quarter-master general's departments of the state of Massachusetts, or persons acting under the authority of these departments, contrary to the provisions of the preceding section, may be seized by any two or more of the engineers of the city of Boston, and the same may be libelled and condemned and sold, and the proceeds thereof distributed, as is by law provided for the forfeiture of gunpowder in other cases within said city.

5. No person, except on military duty in the public service of the United States, or of this commonwealth, shall keep, have, or possess in any building or in any place, or in any carriage, or on any wharf, or on board of any ship or other vessel within two hundred yards of any wharf, or of the mainland in the city of Boston, gunpowder, in any quantity exceeding one pound, in any way or manner other than by this and the eight following sections, and by the rules and regulations hereinafter mentioned, may be permitted and allowed. And all gunpowder had, kept, or possessed contrary to the provisions of said sections and of such rules and regulations shall be forfeited, and liable to be seized and proceeded against in the manner hereinafter provided.

6. It shall not be lawful for any person or persons to sell any gunpowder, which may at the time be within the city of Boston, in any quantity, without first having obtained from the engineers of said city a license, signed by the chief engineer or by the secretary of the board of engineers, on which shall be written or printed a copy of the rules and regulations by them established, relative to keeping, selling, and transporting gunpowder within said city; and every such license shall be in force for one year from the date thereof, unless annulled by the board of engineers, and no longer; but such license may, prior to the expiration of that term, be renewed by the chief engineer or the said secretary, from year to year, by indorsement thereon: *provided, always*, that the board of engineers may rescind any such license, if in their opinion the

person or persons have disobeyed the law, or infringed any rules and regulations established by said board of engineers. And every person who shall receive a license to sell gunpowder, as aforesaid, shall pay for the same the sum of five dollars, and for the renewal thereof the sum of one dollar, which sums shall be paid to the board of engineers, for their use, for the purpose of defraying the expenses of carrying these enactments into execution.

1833, c. 151, § 2.
Fees for license.

7. The board of engineers of the city of Boston may establish rules and regulations, from time to time, relative to the times and places at which gunpowder may be brought to or carried from said city by land or water; the times when and the manner in which the same may be transported through said city; to direct and regulate the kind of carriages and boats in which the same may be so brought to, carried from, and through said city, and to direct the manner in which gunpowder may be kept by licensed dealers and other persons, and to direct and require all such precautions as may appear to them needful and salutary to guard against danger in the keeping and transportation of gunpowder.

Engineers may
establish rules
and regulations.
Ibid. § 3.
Thacher's Crim.
Cases, 14.

8. All gunpowder which shall be kept, had, or possessed within the city of Boston, or brought into or transported through the same, contrary to the provisions of said sections¹ and to the rules and regulations made as aforesaid, may be seized and taken into custody by any one or more of the engineers of said city, and the same shall, within twenty days next after the seizure thereof, be libelled, by filing in the office of the clerk of the superior court for the transaction of criminal business, a libel, stating the time, place, and cause of such seizure, a copy of which libel, or the substance thereof, together with a summons or notice, which such clerk is hereby authorized to issue, shall be served on the person or persons in whose custody or possession such gunpowder shall have been seized, if such person be an inhabitant of this commonwealth, by delivering a copy thereof to such person or persons, or leaving such a copy at his, her, or their usual place of abode fourteen days at least before the sitting of the court at which the same is to be heard, that such person or persons may appear and show cause why the gunpowder so seized and taken should not be

Gunpowder in
Boston kept
contrary to law
may be seized,
etc.
1833, c. 151, § 5.
1 Met. 225, 232.
Thacher's Crim.
Cases, 14, 596.

Service of copy
and summons.

¹ That is, §§ 5, 6, 7, 8, 9, 10, 11, 12 and 13, in the text.

1833, c. 151, § 5. adjudged forfeit. And if the powder so seized shall be adjudged forfeit, the person or persons in whose custody or possession the same was seized, or the occupant or tenant of the place wherein the same was so seized, shall pay all costs of prosecution, and execution shall be issued therefor: *provided*, that it appear to the court that such person or persons had notice of such prosecution by service as aforesaid; and in case the person or persons in whose custody or possession such gunpowder may be seized shall be unknown to the engineer or engineers making such seizure, or in case such gunpowder, at the time of seizure, may not be in the custody or possession of any person, or if it shall appear by the return of the officers that such person cannot be found, or has no place of abode in this commonwealth, then said court shall and may proceed to adjudication thereon. And such libel or summons, and also such writ of execution for costs, shall and may be served and executed in any county in this commonwealth, and by any officer competent to execute civil process in like cases.

Costs.
Adjudication.

Service may be made in any county.

Penalty for hindering engineers or attempting to rescue powder. Ibid. § 6. 9. Any person or persons who shall rescue, or attempt to rescue, any gunpowder seized as aforesaid, or shall aid or assist therein, or who shall counsel and advise, or procure the same to be done, or who shall molest, hinder or obstruct any engineer in such seizure, or in conveying gunpowder so seized to a place of safety, shall forfeit and pay a fine for each offence of not less than one hundred dollars, and not exceeding five hundred dollars, to be sued for and recovered by action of the case by any person or persons who shall sue for the same in any court proper to try the same; and it is hereby made the duty of all persons to aid and assist each engineer or engineers in executing the duties hereby required.

Duty of all citizens to assist the engineers.

Engineers may enter and examine stores, etc., of those licensed to sell, if rules, etc., are observed. Power in case of fire. Ibid. § 7. 10. The said engineers, or any of them, may enter the store or place of any person or persons licensed to sell gunpowder, to examine and ascertain if the laws, rules and regulations relating thereto are strictly observed; and on an alarm of fire may cause the powder there deposited to be removed or destroyed, as the case may require; and it shall be lawful for any one or more of the engineers of said city to enter any dwelling-house or other place in the city of Boston to search for gunpowder, first having obtained from a justice of the police court in said city a search

Search warrant.

warrant therefor, which warrant the justices of said court are hereby authorized to issue, upon the complaint of such engineer or engineers, supported by his or their oath. 1833, c. 151, § 7.

11. Any person who shall suffer injury by the explosion of any gunpowder had, kept, or transported within the city of Boston, contrary to the provisions of said sections,¹ and of the rules and regulations established as aforesaid, may have an action of the case in any court proper to try the same, against the owner or owners of such gunpowder, or against any other person or persons who may have had the possession or custody of such gunpowder at the time of the explosion thereof, to recover reasonable damages for the injury thus sustained. Persons injured by gunpowder kept contrary to law may have an action for damages. Ibid. § 8.

12. It shall be the duty of the engineers of the city of Boston to cause all such rules and regulations as they may make and establish, by virtue of the authority given as aforesaid, to be published in two or more newspapers printed in the city of Boston, and to cause such publication to be continued three weeks successively, for the information and government of all persons concerned. Engineers to publish their rules and regulations in newspapers. Ibid. § 9.

13. All fines, penalties, and forfeitures which may arise and accrue under the eight preceding sections shall and may be prosecuted for and recovered, either in the manner therein specially provided, or by indictment, complaint, or information in any court proper to try the same. And said act shall be taken and deemed to be a public act, of which all courts, magistrates, and citizens are bound to take notice as such; and in any libel, action, indictment, information, or complaint upon said act, it shall not be necessary to set forth any more of the same than so much thereof as relates to, and may be necessary truly and substantially to describe the offence alleged to have been committed.² How fines, etc., may be recovered. Ibid. § 10.

Not necessary to set forth more of the act than is necessary to describe the offence.

¹ That is, §§ 5, 6, 7, 8, 9, 10, 11, 12 and 13, in the text.

² The statute of 1833, c. 151, referred to in sect. 13, in the text, contained, in sect. 12, a general repeal of acts and parts of acts inconsistent therewith, which apparently repeals stat. 1792, c. 7; 1801, c. 20; 1803, c. 120; 1807, c. 137; 1816, c. 26; and 1820, c. 47.

It also provided that all rules and regulations made and established by the engineers, under and by virtue of the provisions of former acts, should continue to have the same force and effect, until altered or annulled by the said engineers, as if this act had not been passed.

Penalty for keeping or selling gunpowder contrary to law. 1837, c. 99, § 1. 1 Met. 225, 232. Thacher's Crim. Cases, 14, 596.

14. Any person who shall keep, have, or possess any gunpowder within the city of Boston, contrary to the provisions of the nine preceding sections, or to the rules and regulations of the board of engineers therein mentioned, or who shall sell any gunpowder in said city without having a license therefor, or contrary to such license, or the rules and regulations aforesaid, shall forfeit a sum not less than one hundred dollars, and not exceeding five hundred dollars, for each offence; and if any gunpowder kept contrary to the said provisions, or to such license, or to the rules and regulations aforesaid, shall explode in any building or on board of any ship or other vessel, or in any place in said city, the occupant, tenant, or owner of which has not then a license to keep and sell gunpowder therein, such occupant, tenant, or owner, shall forfeit a sum not less than one hundred dollars, and not exceeding one thousand dollars, for each offence.

How fines shall be appropriated. Ibid. § 2. Proviso.

15. The several fines, penalties, and forfeitures, mentioned in the ten preceding sections, shall inure to the sole use of the board of engineers of the fire department of said city of Boston: *provided, however*, that whenever, on the trial of any prosecution, under the said sections, any one or more of the said engineers shall be sworn and examined as a witness on behalf of the prosecution, a record thereof shall be made in court, and in such case the fine, penalty, or forfeiture shall inure to the use of the poor of the city of Boston, to be paid over to the overseers of the poor thereof.

When gunpowder less than ten quarter-casks is seized, a libel or complaint may be filed in court. 1841, c. 53, § 1.

16. Whenever any quantity less than ten quarter-casks of gunpowder shall be seized and taken into custody by any one or more of the engineers of the fire department of the city of Boston, a libel or complaint may be filed in the clerk's office of the municipal court of said city of Boston, and the said municipal court of said city shall have jurisdiction thereof; and the like proceedings thereon (excepting a trial by jury) shall be had in said court as are provided for by the fifth section of the act passed on the twenty-fifth day of March, in the year one thousand eight hundred and thirty-three,¹ in the like cases of seizures and proceedings before the superior court, — saving always to any party aggrieved

¹ That is, § 8 in the text.

by any final judgment of said municipal court, the right of appeal and trial by jury in said superior court. 1841, c. 58, § 1.

17. All fines, penalties, and forfeitures imposed by the twelve preceding sections may be sued for and recovered by the chief engineer, or any one or more of the engineers of the fire department of the said city of Boston, or by any person thereto authorized by a vote of the board of engineers of the said fire department.¹

Fines may be sued for by chief engineer, or one or more engineers, etc. Ibid. § 2.

18. Whoever wilfully and maliciously, by the explosion of gunpowder or any other explosive substance, unlawfully destroys or injures any dwelling-house, office, shop, or other building, or any ship or vessel, shall be punished by imprisonment in the state prison not exceeding twenty years, or in the jail not exceeding five years, or by fine not exceeding one thousand dollars.

Wilful injury to houses, etc., by exploding gunpowder, etc. G. S. c. 161, § 68.

19. Whoever wilfully and maliciously throws into, against, or upon, or puts, places, or explodes, or causes to be exploded in, upon, or near any dwelling-house, office, shop, building, or vessel, any gunpowder or other explosive substance, or any bomb-shell, torpedo, or other instrument filled or loaded with any explosive substance, with intent unlawfully to destroy or injure such dwelling-house, office, shop, building, or vessel, or any person or property therein, shall be punished by imprisonment in the state prison not exceeding ten years, or in the jail not exceeding five years, or by fine not exceeding five hundred dollars.

Throwing explosive substances into dwellings, etc. Ibid. § 69.

20. Gunpowder manufactured in this state shall be put into strong and tight casks containing twenty-five pounds, fifty pounds, or one hundred pounds each, unless the same is well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass or tin covers.

Quality and size of casks, etc., for gunpowder. Ibid. c. 49, § 69.

21. Each cask containing gunpowder manufactured within this state, or brought into the same by land or water and landed, shall be marked on the head with black paint, in legible characters, with the word *gunpowder*, the name of the manufacturer, the weight of the cask, and the year in which the powder was manufactured; and each canister of gunpowder shall be marked with the word *gunpowder*.

All casks to be marked. Ibid. § 70.

¹ For powers of the board of engineers to make rules and regulations relating to fireworks see "Fire Department," p. 331.

Penalty for
falsely marking,
etc.
G. S. c. 49, § 71.

22. Whoever knowingly marks a cask of gunpowder with the name of any person other than the manufacturer of the same, or changes gunpowder from a cask marked with the name of one manufacturer into a cask marked with the name of another manufacturer, shall, for each offence, forfeit a sum not exceeding twenty dollars.

Towns, etc.,
may order how
gunpowder,
gun-cotton, etc.,
shall be kept.
Ibid. c. 88, § 48.

23. The city council of a city and the inhabitants of a town may order that no gunpowder shall be kept in any place within the limits thereof, unless it is well secured in tight casks or canisters; that no gunpowder above the quantity of fifty pounds shall be kept or deposited in any shop, store, or other building, or in a ship or vessel which is within the distance of twenty-five rods from any other building or wharf; that no gunpowder above the quantity of twenty-five pounds shall be kept or deposited in any shop, store, or other building within ten rods of any other building; and that no gunpowder above the quantity of one pound shall be kept or deposited in any shop, store, or other building within ten rods of another building, unless it is well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass, or tin covers. They may make a like order in regard to gun-cotton, or other substances prepared like it for explosion, and, if considered necessary for public safety, may restrict the quantity to be so kept to one-fifth of the weight of gunpowder allowed by this section.

Justices to issue
warrants for
searching places
where gunpow-
der, etc., is sus-
pected to be un-
lawfully kept.
Ibid. § 49.

24. Upon complaint made to a justice of the peace or police court by the mayor or either of the aldermen, selectmen, or firewards of any place, that he has probable cause to suspect, and does suspect, that gunpowder, gun-cotton, or other substance prepared like it for explosion, is deposited and kept within the limits thereof contrary to law, such justice or court may issue a warrant directed to either of the constables of such place, ordering him to enter any shop, store, or other building, or vessel specified in the warrant, and there make diligent search for such gunpowder, gun-cotton, or other substance suspected to have been so deposited or kept, and to make return of his doings to said justice or court forthwith.

Penalty for un-
lawfully keep-

25. Whoever commits an offence against any order made under section twenty-three shall forfeit a sum not exceeding

twenty dollars; but the two preceding sections shall not extend to any manufactory of gunpowder, gun-cotton, or other substance aforesaid, nor in any case prevent the transportation thereof through any city or town, or from one to another part thereof.

ing gunpowder,
etc.
G. S. c. 83, § 50.
1833, c. 135.

HARBOR.

STATUTES.

ISLANDS.

1. Concurrent jurisdiction has been ceded to the United States, by the commonwealth of Massachusetts, over the following places in the harbor of Boston,¹ viz. : —

Concurrent jurisdiction of
places ceded to
the United
States.

The light-house on Light-house island.

1 Met. 580.

The beacon on the spit of land near the light-house.

1790, c. 4.

Castle island.

Ibid.

Governor's island.

1793, c. 13.
1807, c. 125.
1846, c. 16.

Long-island head for a light-house.

1819, c. 69.

Half-way rock for a beacon.

Ibid.

A place called Nix's Mate, for a beacon.

1832, c. 41.

George's and Lovell's islands.²

1846, c. 16.

Minot's rock, or ledge, for a light-house.

1847, c. 109.

A portion of the island called the Great Brewster, for the pur-

1849, c. 45.

¹ By Sts. 1871, c. 233, and 1874, c. 383, jurisdiction was ceded to the United States over any tracts of land within the commonwealth, whether upland or covered by tide-water, the title of which has been, or may be, acquired by the United States for the purpose of erecting or maintaining light-houses, beacon lights, etc.

² George's and Lovell's islands were purchased of Levi Lincoln, guardian of Caleb Rice, May 2, 1825, and were granted to the United States June 22, 1825. See *Suffolk Deeds*, lib. 201, fol. 9. These islands were bought for the sum of \$6,000, in addition to an annuity of \$400 during the life of Caleb Rice. He died in September, 1848, and the total of annuities paid was \$10,350, which, with the principal sum of \$6,000, makes the total cost of these islands to the city \$16,350. See *City Records*, vol. 3, p. 74, and vol. 26, p. 524. Fort Warren is on George's island.

1849, c. 45, §§ 1, 2. pose of the erection thereon of a sea-wall for the preservation of said island.¹

1855, c. 17. Land for a light-house on the spit at the entrance of the Narrows.

Ibid. Land for a beacon on Point Alderton bar, on the south side of entrance to Light-house channel.

1867, c. 315. So much of Gallop's island² and Point Alderton as may be required for the construction and protection of a sea-wall to be erected for the security of Boston harbor.

1867, c. 314.
1868, c. 292.
1868, c. 293. So much of Long island as may be purchased by the United States for the protection and preservation of Boston harbor, and for purposes of national defence, — shown on a plan deposited in the office of secretary of state.

Thompson's
Island annexed
to Boston.

1834, c. 102.

Provisos.

By an act passed March 25, 1834, Thompson's island, lying in the harbor of Boston, and previously a part of the town of Dorchester, with the inhabitants thereon, was annexed to the city of Boston, in the county of Suffolk: *provided*, that said island should revert to the town of Dorchester, in one year after it should cease, by the voluntary act of the proprietors, to be used for the purposes of a farm school, or other charitable public purposes, and should be appropriated to any other use: *and provided also*, that nothing in the act contained should destroy or affect any lawful right that the inhabitants of the said town of Dorchester then had, to dig and take clams on the banks of said island. The island is exempted from taxation so long as it shall continue to be appropriated to the use of the Boston farm-school, or to any similar public charity.

¹ The Great Brewster island, containing about sixteen acres, was purchased by the city in 1848, for the sum of \$4,000, for the purpose of protecting the harbor. See *City Records*, vol. 26, p. 518.

² Gallop's island, containing about sixteen acres, was purchased for the same purpose, in 1860, for \$6,600. *City Records*, vol. 38, p. 276. By an act passed May 14, 1864 (chap. 315), the city of Boston was authorized to raise, by taxation or otherwise, a sum not exceeding \$150,000, and expend the same in the construction of sea-walls and other necessary works on Great Brewster island and Deer island, in order to prevent further injury to the harbor from the abrasion of the headlands; the amount expended by the city to be reimbursed by the state from the receipts for the sale of flats. The city did not take advantage of the provisions of the act, as the United States government made an appropriation for the purpose soon after.

2. By a resolve passed April 27, 1869, the governor was authorized to sell and convey, with the consent of the council, by a good and sufficient warranty-deed, the island in Boston harbor called Raynsford island, with all the buildings thereon, and pay the proceeds of the sale into the state treasury.¹

Governor authorized to sell Raynsford island. Resolves. 1869, c. 39.

3. The concurrent criminal jurisdiction of the courts in the county of Suffolk, so far as it relates to the islands or waters of Boston harbor, shall not extend to the southward of a line drawn westwardly from the most easterly point of Point Alderton, through the most northerly point of Moon island to the channel of Neponset river, excepting those portions of the town of Hull embraced within the provisions of chapter one hundred and seventy-seven of the acts of the year one thousand eight hundred and sixty-three.

Criminal jurisdiction of courts in Suffolk county over islands and waters in Boston harbor. 1876, c. 8. See G. S. c. 17, § 10. 1863, c. 177.

HARBOR REGULATIONS.

4. No vessel which shall cast anchor in the harbor of Boston, between India wharf and Gray's wharf, shall anchor within five

No vessel to anchor except within certain limits.

¹ Raynsford island was conveyed, by deed, by John Loring and others, December 7, 1736, to the treasurer and receiver-general of the province of Massachusetts bay, "in trust for the use of the governor, council, and assembly of his majesty's province of the Massachusetts bay and their successors forever, to be used and improved for an hospital for the said province." *Suffolk Records*, lib. 53, fol. 162. In 1871 the state sold and conveyed to the city of Boston all its right, title and interest in the island for the sum of \$40,000. It is now occupied by the male paupers.

Deer island, containing about one hundred and thirty-four acres of upland and fifty acres of flats, was granted to the inhabitants of Boston, March 4, 1634-5; and the income derived from its occupation and lease was devoted to the support of the free school in Boston.

May 15, 1753, a pest-house was established on said island for the accommodation of sick persons arriving by sea. From this period the island was leased to different persons by the town and city until 1842, when the subject of locating the quarantine establishment on said island was agitated. In 1847 the fatal character of the "ship fever," which prevailed extensively among the immigrants at this port, determined the city government to place the house of industry on said island, which was also established as a place for quarantine. The house of industry, and house of reformation for boys and girls, are now located on this island.

Apple island, containing nine and one-half acres, was purchased by the city, in 1867, for \$3,750.

1847, c. 234, § 1. hundred feet of the line described in the second section of an act entitled "An act to preserve the harbor of Boston, and to prevent encroachments therein," passed on the nineteenth day of April, in the year one thousand eight hundred and thirty-seven, and no vessel which shall cast anchor between the easterly side of Lamson's wharf and the easterly side of Tuttle's wharf, at East Boston, shall anchor within five hundred feet of the line described in the fifth section of "An act concerning the harbor of Boston," passed the seventeenth day of March, in the year one thousand eight hundred and forty, unless for the purpose of hauling in, as soon as practicable, to some wharf in said harbor, or unless compelled to do so by reason of stress of weather, or unavoidable casualty; and, for every offence against either of the foregoing provisions in this section, after having been notified thereof by the harbor master, who may be appointed as hereinafter mentioned, or by any party aggrieved, the master, commander, or owners of such vessel shall be subject to a penalty not exceeding twenty-five dollars.

Penalty.

Steam vessels
not to pass
wharves faster
than five miles
an hour.
1872, c. 16, § 1.

Penalties.

Ibid. § 2.

Damages.

Ibid. § 3.

Trim of vessels
at wharves.
1847, c. 234, § 2.
See 1843, c. 314,
§ 3; also § 16,
post, for addi-
tional provi-
sions.

Penalty.

5. No vessel propelled by steam shall, either in Boston harbor or Charlestown harbor, pass within one hundred yards of any wharf at greater speed than at the rate of five miles an hour.

6. The master, pilot and engineer of any vessel violating the provisions of this act shall severally be punished by fine not exceeding one hundred dollars.

7. The owner of any vessel violating the provisions of this act shall pay to any person suffering damage thereby, the full amount of such damage, to be recovered in an action of tort.

8. The master, commander or owners of every vessel shall, as soon as practicable after having hauled to the end of any wharf that extends to the channel in said harbor, cause her lower yards to be cockbilled, and her jib-boom to be rigged in, so that the said jib-boom may not annoy any other vessel or vessels going in or out of the adjoining docks; and the lower yards and jib-boom shall be kept so arranged while such vessel lies at the end of the wharf as aforesaid, and until she is preparing immediately to leave her berth; and for every offence against any of the provisions in this section, the master, commander or owners, or either of them, of such vessel, shall be subject to a penalty not exceeding ten dollars.

9. No person shall throw or deposit in said harbor, or any part thereof, any stones, gravel, ballast, cinders, ashes, dirt, mud or other substances which may in any respect tend to injure the navigation thereof; and whoever shall offend against the provisions of this section shall be subject to a penalty not exceeding fifty dollars.

Penalty for throwing stones, etc., into the harbor.
1847, c. 234, § 3.
See 1848, c. 314, § 2; also, § 15, *post*.

10. No warp or line shall be passed across the mouth of any slip, for the purpose of hauling a vessel by said slip, before the vessel shall be within one hundred feet of said slip, if the owners or occupants thereof object, unless the harbor master, who may be appointed as hereinafter mentioned, shall have decided it to be necessary; and for every offence against this provision the master, commander, or owners of such vessel shall be subjected to a penalty not exceeding five dollars.

Regulation of warps and lines.
1847, c. 234, § 4.

11. The city council of the city of Boston may, if they shall deem it expedient, annually appoint, by concurrent ballot in each board, a harbor master for the port of Boston, who shall hold his office for one year, and until another shall be appointed in his place, or until he shall be removed by said city council; and before entering upon his office he shall give bond to the said city, with sufficient sureties, to the satisfaction of the mayor and aldermen, in the penal sum of two thousand dollars, conditioned for the faithful discharge of the duties of said office; and in case of the sickness or disability of the said harbor master he may appoint a deputy, subject to the approval of said mayor and aldermen, to perform his duties during such sickness or disability; and said harbor master shall be allowed and paid quarterly, out of the city treasury, such salary for his services as said city council shall from time to time establish.

Penalty.

City council may appoint a harbor master.
Ibid. § 5.
See § 24, *post*.

Bond.

He may appoint a deputy, in case, etc.

Compensation.

12. It shall be the duty of the said harbor master to enforce the execution of the several provisions of chapter two hundred and thirty-four of the acts of the year 1847 [§§ 4, 8, 9, 10, 11, 12 and 13 of this digest] and of all other laws of the commonwealth relating in any way to said harbor; and to prosecute all violations of such laws and ordinances, and to take all lawful measures to prevent the doing of any act by which the flow of the tides, or the force, direction, or depth of the current into, out of, or through the said harbor may, in any degree, be injuriously affected. And said harbor master shall also have authority so to regulate the anchor-

His duties and authority.
Ibid. § 6.

1847, c. 234, § 6. age of vessels that, as far as may be practicable, ferry boats may pass unobstructed, and the channel shall be kept clear from the wharves to Castle island.

Recovery of penalties. Ibid. § 7. 13. All the several penalties mentioned in the six preceding sections may be recovered by complaint before the police court¹ of the city of Boston, or by indictment, for the use of the said city.

Harbor master's further authority. 1843, c. 314, § 1. 14. The harbor master authorized to be appointed, by section eleven, shall have authority to regulate the anchorage of all vessels in the upper harbor of Boston, and, when necessary, to order the removal of such vessels, and to cause the same to be removed in obedience to such order, at the expense of the master

Penalty for obstructing him in the performance of his duties, or for neglect to obey his orders. How to be recovered. or owners thereof; and if any person shall obstruct said harbor master in the performance of any of his duties, as herein prescribed, or shall neglect or refuse to obey any lawful order made by said harbor master, he shall be liable to a penalty not exceeding fifty dollars for each offence, to be recovered by indictment, for the use of the city of Boston.

Master or owners liable for throwing stones, etc., in harbor. Ibid. § 2. 15. Whenever any person on board of any vessel shall violate the provisions of the ninth section, the master or owners of said vessel shall be liable to the penalty prescribed in said last-mentioned section, as well as the person so offending.

Yards of vessels at wharf to be cockbilled, etc. Ibid. § 3. 16. The provisions of the eighth section shall apply to all the yards of vessels as well as the lower yards, anything in said last-mentioned section to the contrary notwithstanding.

Vessels in harbor to keep an anchor watch, and light. Penalty; how to be recovered. Ibid. § 4. 17. All vessels at anchor in the harbor of Boston shall keep an anchor watch at all times, and shall keep a clear and distinct light, suspended at least six feet above the deck, during the night; and whenever the provisions of this section shall be violated on board any vessel, the master or owners shall be liable to a penalty of not more than twenty dollars, to be recovered in the manner provided in section thirteen, and shall be held liable to pay all damages that may be occasioned by such violation.

No ashes, etc., to be thrown into the harbor. 1837, c. 229, § 7. 18. No ashes, cinders, or other rubbish or materials of any description shall be put or thrown out of any steamboat in the harbor of Boston above Fort Independence, under a penalty of ten dollars for each offence.

¹ Now municipal court.

19. By an act passed June 6, 1856, it is prescribed that any person who shall take, carry away, or remove, by land or water, any stones, gravel, or sand from any of the beaches, headlands, or islands within or bordering upon Boston harbor, without a license therefor from the mayor and aldermen of the city of Boston, shall, for each offence, forfeit a sum not exceeding twenty dollars, to be recovered by complaint or indictment, in any court of competent jurisdiction.¹

Penalty for carrying away stones, gravel, etc.
1856, c. 301, § 1.

20. The same act declares that Boston harbor, for the purposes of that act, shall be deemed to extend to a line drawn from the outer end of Commercial point in the town of Dorchester, direct to the outer end of Point Alderton in the town of Hull; thence to the outer end of the outer Brewster island, and thence direct to the Short beach, at the division lines between the towns of Revere and Winthrop. All acts and parts of acts inconsistent with said act are repealed.

Limits of Boston harbor for certain purposes.
Ibid. §§ 2, 3.
See § 3, ante.

21. By an act passed March 5, 1860, it is prescribed that any person or persons who shall moor any vessel, scow, boat, or raft to any buoy or beacon or floating guide, placed by the United States in the navigable waters of this commonwealth, or who shall in any manner make fast thereto any vessel, boat, scow, or raft, shall forfeit and pay a sum not exceeding fifty dollars; and any person or persons who shall wilfully destroy, injure, or remove any such beacon or guide, shall forfeit and pay a sum not exceeding one hundred dollars, or be imprisoned in the common jail not exceeding three months. Said forfeitures may be recovered by an action of tort, complaint, or indictment, before any court competent to try the same; one-third accruing to the informer or complainant, and the other two-thirds to the county in which the trial shall be had.

Mooring to buoys, beacons, or floating guides prohibited.
1860, c. 53, § 1.

Penalty for wilful destruction of buoys, beacons, or guides.

Forfeitures, how recovered.
Ibid. § 2.

¹Chapter 168, of the acts of 1834, provides that "if any person shall wilfully carry away from any island within the harbor of Boston, or from any beach adjacent thereto, any earth, gravel, stone, or other material composing such island, or beach, without the consent of the owner thereof, the person or persons so offending shall forfeit and pay for each offence, to the use of the commonwealth, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by indictment in any court competent to try the same: *provided*, that this act shall not be construed to prevent the taking of shell fish from such islands and beaches." See 11 Met. 55.

No raft, etc., to be moored to any private bridge, wharf, etc., except, etc. 1862, c. 73, § 1.

Penalty.

§ 2.

No raft, etc., to be moored to any public bridge, etc., except, etc. Ibid. § 2. See bridges. p. 64.

Harbor master to be appointed by mayor and aldermen; his duties prescribed by city council. 1862, c. 64, §§ 1, 4. See § 11, ante.

22. By an act passed March 19, 1862, it is provided that every person who shall attach or moor any raft, or collection of spars, logs, piles, timber, or lumber to any bridge, pier, or wharf in the harbor of Boston, longer than ten hours, without the written consent of the owner thereof, shall for every such offence forfeit and pay to such owner a sum not less than twenty-five dollars, and five dollars for every successive day during which such attachment or mooring shall be so continued; and shall be further liable for all damages to such bridge, pier, or wharf, caused by such attachment or mooring, or any continuance thereof, to be recovered by an action of tort.

23. Every person who shall attach or moor any raft, or collection of logs, spars, piles, timber, or lumber to any public bridge in the harbor of Boston, for more than ten hours, without the permission in writing of the mayor of Boston, shall be liable to a penalty of not less than twenty-five dollars, and five dollars for every succeeding day during which such attachment or mooring shall be so continued; to be recovered by complaint before the police court of the city of Boston.

24. By an act passed March 11, 1862, it is provided that the harbor master for the port of Boston shall hereafter be appointed by the mayor and aldermen of the city of Boston, instead of the city council of said city; and he shall continue to have all the powers, and be subject to all the duties, liabilities and obligations which now appertain by law to the said office; and the city council of the city of Boston may make and ordain all such ordinances, rules, orders, and regulations for prescribing the duties, and controlling the action of the said harbor master, as they shall deem expedient: *provided*, such ordinances, rules, orders, and regulations are not repugnant to law; and they may, if they shall deem it expedient, provide by ordinance for adding to the duties of the said harbor master the duties of captain of the harbor police. The act is to take effect as soon as the same shall be accepted by the city council of the city of Boston.¹

¹ The above act has not been accepted by the city council.

HARBOR COMMISSIONERS.

25. By an act passed April 12, 1866, the legislature established a board of harbor commissioners,¹ to have the general care and supervision of all the harbors and tide-waters, and of all the flats and lands flowed thereby, within the commonwealth, — except the Back-bay lands, so called in the city of Boston, — in order to prevent and remove unauthorized encroachments and causes of every kind which are liable to interfere with the full navigation of said harbors, or in any way injure their channels, or cause any reduction of their tide-waters;² and in order to protect and develop the rights and property of the commonwealth in said flats and lands.

Board of harbor
commissioners
established.
1866, c. 149.

26. All persons that have been or may be authorized by the legislature to build over tide-waters any bridge, wharf, pier or dam, or to fill any flats, or to drive any piles below high-water mark, shall, before beginning it, give written notice to the harbor commissioners of the work they intend to do, and submit plans of any proposed wharf or other structure, and of the flats to be filled, and of the mode in which the work is to be performed; and no such work shall be commenced until the plan and mode of performing the same shall be approved in writing by a majority of the said harbor commissioners. And the said commissioners shall have power to alter the said plans at their discretion, and to prescribe the direction, limits and mode of building of the wharves and other structures, to any extent that does not diminish or control the legislative grant; and all such works shall be executed under the supervision of the commissioners. The amount of tide-water displaced by any structure or filling of flats, hereafter authorized as aforesaid, shall be ascertained by the harbor commissioners; and they shall, in all cases affecting the harbor of Boston, and in cases affecting other harbors, if they shall deem it necessary, require the parties making the same to make compensation therefor, either by excavating in some part of the same harbor where the work is performed, includ-

To approve all
authorized
works in har-
bor. Compens-
ation for dis-
placed tide-
water.
Ibid. § 4.

¹ The five commissioners authorized by the act were appointed by the governor June 29, 1866.

² For reports of U. S. commissioners on the preservation of Boston harbor, see city docs. numbered 34, 1860; 37, 1860; 97, 1860; 12, 1861; 62, 1861; 63, 1861; 35, 1863; 53, 1863; 33 and 34, 1864; 28, 1865; 50, 1866.

1866, c. 149, § 4. ing tide-water channels, between high and low water mark, to such an extent as to create a basin for as much tide-water as may be displaced by such structure or filling of flats; and the same shall be done under their direction, or by paying, in lieu of performing the work of dredging to restore the displaced tide-water, a sufficient sum of money for making such compensation, or by improving the harbor in any other mode to the satisfaction of the commissioners; and all money thus paid shall be paid into the treasury of the commonwealth, and be reserved as a compensation fund for the harbor, where such compensation is to be made, and used for that purpose under the direction of the commissioners: *provided*, that all dredging made for purposes of such compensation for displaced tide-water shall in no wise injure any existing channels, but as far as practicable shall be directed towards their permanent improvements.¹

SOUTH BOSTON FLATS.

Plan for improvement of South Boston flats, adopted by legislature, 1866, c. 81, Resolves.

27. By resolves passed May 18, 1866, the legislature adopted a plan for the improvement of the South Boston flats, the main features of which were, an extension of the wharves on the west-erly side of Fort Point channel, for the purpose of giving a proper direction to the current; the construction of a sea-wall on the easterly side of Fort Point channel, which should inclose the flats on the northerly shore of South Boston as far as slate ledge; and extensive excavations in the tidal reservoirs of Boston harbor to compensate for the tide-water displaced by the occupation of the flats. The harbor commissioners were directed to ascertain and report to the next legislature the cost of carrying out the improvement according to the plan adopted; and were authorized to contract with the city of Boston for the construction of the whole or any part of Eastern avenue.²

¹ For additional provisions defining the powers and duties of the commissioners in protecting the rights of the commonwealth in tide-waters, and in licensing riparian owners to build wharves and other structures, see Sts. 1869, c. 432, and 1872, c. 236. In view of the powers given to the commissioners, the several acts establishing harbor lines in the harbor of Boston are omitted.

² See city doc. 97, 1866, report on the occupation of the South Boston flats.

28. By an act passed June 9, 1868, the harbor commissioners were authorized to contract, in the name of the commonwealth, with any person, or persons, or with the city of Boston, for filling any portion of the land or flats on the northerly shore of South Boston, and for building wharves, docks, sea-walls, basins, streets, bridges, or sewers, and for dredging or doing any work upon or in relation to said flats, and to pay for the same by conveyance of any portion of said flats, or the granting of any rights or privileges therein; all their acts to be subject to the approval of the governor and council.

Harbor commissioners authorized to fill South Boston flats, build sea-walls, docks, etc.
1868, c. 326.

29. By an act approved June 22, 1869, the powers of the harbor commissioners were enlarged, to authorize them to purchase for and in the name of the commonwealth, any lands and flats on the northerly shore of South Boston, lying westerly of the easterly line of E street extended, and extinguish by purchase any claims to title in such lands and flats.

Harbor commissioners authorized to purchase lands and flats on the northerly shore of South Boston.
1869, c. 446.

30. By an act passed May 4, 1872, the harbor commissioners, with the approval of the governor and a majority of the council, were authorized to contract for the construction, on a parcel of South Boston flats, situated at the junction of Fort Point channel and the main channel, in Boston harbor, and adjoining the flats of the Boston Wharf company and the flats sold by the commonwealth to the Boston and Albany Railroad company, — of sea-walls upon said channels, substantially on the lines shown on the plan for the occupation of the commonwealth's flats in South Boston, appended to the sixth annual report of said board to the legislature, and contract for the filling of said parcel within said walls with solid material; and said board of harbor commissioners shall have, in relation to said parcel, and the improvement of the same, all the powers conferred upon them by chapter three hundred and twenty-six of the acts of the year eighteen hundred and sixty-eight, and in addition may pay in cash for the improvement of said parcel, as authorized by law, and they shall be subject to all the provisions of said act not inconsistent herewith; and said board is further authorized to procure the discharge of all there may be on said parcel for taxes: *provided*, that all plans and contracts for the improvement of said parcel shall be subject to the approval of the governor and a majority of the council.

Sea-walls on South Boston flats.
1872, c. 320, § 1.

Wharves on
South Boston
shore.

1872, c. 320, § 2.

31. The harbor commissioners may authorize, subject to the approval of the governor and a majority of the council, and to the provisions of section four of chapter one hundred and forty-nine of the acts of the year eighteen hundred and sixty-six, and of chapter four hundred and thirty-two of the acts of the year eighteen hundred sixty-nine, and on such other terms as may be considered just, the construction of wharves and docks at the junction of the main channel and Fort Point channel, on the north-westerly side of the channel last named, within the outer general line of a scheme of wharves and docks shown on said plan, for the occupation of the commonwealth's flats in South Boston, appended to the sixth annual report of said board, notwithstanding any existing harbor line heretofore established at said place.

Commissioners
may allow
wharves, etc.,
to be built in
South bay of
Boston harbor,
subject to ap-
proval of the
governor and
council.
1871, c. 335.
Proviso.

32. By an act passed in 1871 the board of harbor commissioners were authorized to license any person to drive piles, build a wharf, wall, pier or other structure in tide-water on land and flats in that part of Boston harbor called South bay, or to fill such land and flats to such harbor lines as the harbor commissioners shall fix and determine, subject to the approval of the governor and council, any existing harbor lines on South bay to the contrary notwithstanding: *provided, however*, that no person shall drive any piles, build a wharf, wall, pier or other structure, or do any filling in tide-water on such land and flats, except in accordance with the terms of such license, and subject to the provisions of section four of chapter one hundred and forty-nine of the acts of the year eighteen hundred and sixty-six and of chapter four hundred and thirty-two of the acts of the year eighteen hundred and sixty-nine: and *provided, further*, that nothing contained in this act shall be construed to affect or take away any private rights which cannot lawfully be affected or taken away without compensation therefor; and said commissioners are authorized to make agreements with any claimants of lands and flats in said South bay to secure the establishment of such line or lines, and may make and receive conveyances of land or flats in said South bay in execution of such agreements: *provided*, such agreements are approved by the governor and council. The board is empowered to authorize any person at his own expense to dredge material out of South bay within such limits as may be designated by it.

Private rights
not to be af-
fected.

Commissioners
may make
agreements
with claimants
of flats.

SEA-WALL IN CHARLES RIVER

33. By an act passed May 19, 1866, the city of Boston was authorized and empowered to build a sea-wall in the Charles river, on or within the following described lines: beginning at the point of intersection of the northerly side of Revere street with the harbor commissioners' line, as established in the year eighteen hundred and forty-one, and extending in a straight line south-westerly for a distance of six hundred and twenty-two feet to a point forty feet distant, westerly and perpendicular to the said harbor commissioners' line; thence, on a concave arc of a circle of fourteen hundred feet radius, southwesterly, for a distance of eleven hundred and sixty-one feet, to a point forty feet distant, northerly and perpendicular to the harbor commissioners' line on the northerly side of the milldam, established in the year eighteen hundred and forty; and to fill up to a proper grade the enclosed flats between the above described lines and the harbor commissioners' lines herein referred to, in order to abate and prevent a nuisance arising from the discharge and deposit of sewerage matter upon those flats now situated outside the reach of the scouring forces of the current of Charles river. And the city of Boston was thereby authorized to make any contracts with the riparian owners, and any other parties, as to the building of the sea-wall, the filling of said flats, and the future use thereof when filled, subject to the express condition that the flats filled under the authority hereby granted should not be used for building purposes, or for any other purpose than for ornamental grounds and a street.

City of Boston
may build sea-
wall in Charles
river.
1866, c. 247, § 1.

May fill up flats.

May contract
with riparian
owners.

Land made, use
of restricted.

34. The building of the sea-wall, and the filling up of said flats, shall be under the general supervision of the board of harbor commissioners, and subject to all the regulations and conditions provided for in the act entitled an act to establish a board of harbor commissioners.

Harbor commis-
sioners to super-
vise work.
Ibid. § 2.

FLATS IN PRISON-POINT BAY.

35. The city of Charlestown (now Boston) is authorized to inclose and fill up, under the direction of the harbor commissioners, all of those flats included within the north-easterly side of

Charlestown
authorized to
fill flats in Pris-
on-Point bay.

1868, c. 253, § 1. the Boston and Maine Railroad location, and the present high-water line of the Charlestown shore, and the upland of the commonwealth, said flats being known as the "flats in Prison-Point bay:" *provided, however*, that no portion of the flats owned by the commonwealth shall be filled under this act, except with the consent of the governor and council, and upon such terms and conditions as they may prescribe: and *provided, further*, that the said city of Charlestown shall make compensation from time to time for the amount of tide-water displaced by the filling up of said flats, under this act, the same to be ascertained by the harbor commissioners; such compensation to be made in such manner and at such times as may be directed by said harbor commissioners, according to the provisions of the fourth section of chapter one hundred and forty-nine of the acts of the year eighteen hundred and sixty-six.

May lay out
streets over
territory filled.
Ibid. § 2.

36. The board of mayor and aldermen of said city of Charlestown, are hereby authorized to locate, lay out and construct such streets and highways over the territory thus filled up, as to them seems expedient: *provided, however*, that the same proceedings shall be had in laying out and constructing said streets, as are and may hereafter be provided by law, for the laying out of streets in the city of Charlestown.

ORDINANCE.¹

Joint standing
committee on
the preservation
of the harbor.
Their duties.
Nov. 12, 1846.

SECTION 1. There shall be appointed, annually, a joint standing committee of the city council, consisting of two members of the board of aldermen, and three members of the common council, who shall suggest such measures, and do and perform such acts as they may from time to time deem necessary for the preservation of Boston harbor and the security of the rights and interests of the city therein: *provided*, that no expense shall be incurred exceeding the appropriations previously made by the city council for these purposes.

¹ An ordinance relating to the preservation of Boston harbor, passed November 12, 1846.

HAWKERS AND PEDLERS.

STATUTES.

1. ¹ Any person may go about from town to town, or from place to place, or from dwelling-house to dwelling-house in the same town, exposing to sale and selling fruits and provisions, live animals, brooms, agricultural implements, fuel, newspapers, books, pamphlets, agricultural products of the United States, and the products of his own labor or the labor of his family, but nothing in this section shall be so construed as to include therein any articles of the growth or production of foreign countries.

Articles which may be sold by pedlers without license.
G. S. c. 50, § 13.
1862, c. 178.
12 Cush. 493.

114 Mass. 267.

2. The city council of any city, and the inhabitants of any town, may authorize the mayor and aldermen or selectmen thereof to restrain the sale by minors of any goods, wares, or merchandise, the sale of which is permitted in the preceding section; and while such authority remains in force, the mayor and aldermen and selectmen may make rules restraining such sales by minors, or may grant licenses to minors to make such sales upon such terms and conditions as they shall prescribe: but such restraints and licenses shall not remain in force beyond their term of office. Whoever is guilty of a violation of the rules and regulations so made, or sells any such articles without a license when the same has been required, shall forfeit a sum not exceeding ten dollars for each offence.

Cities and towns may regulate such sales by minors.
G. S. c. 50, § 14.

Penalty.

3. The sale of jewelry, wines, spirituous liquors, playing cards, indigo, and feathers, in the manner specified in section one, is prohibited.

Prohibited articles.
Ibid. § 15.
14 Gray, 29.

4. The secretary of the commonwealth may grant a license to go about exposing to sale and selling any goods, wares or merchandise, not prohibited in the preceding section, to any applicant who files in his office a certificate signed by the mayor of a city, or a majority of the selectmen of the town, stating that to the best knowledge and belief of such mayor or selectmen the applicant therein named is a citizen of the United States, or has declared his intention to become a citizen of the United States, and is of good repute for morals and integrity. The mayor or selectmen,

Secretary may grant licenses on certificate of mayor, etc., for sale of goods not prohibited.
1870, c. 331.

¹ See 12 Cush., 493, on constitutionality of these provisions.

1870, c. 331.

before granting such certificate, shall require the applicant to make oath that he is the person named therein; that he is a citizen of the United States, or has declared his intention to become a citizen of the United States; which oath shall be certified by a justice of the peace, and accompany the certificate. Every license so granted shall bear date the day it is issued, and shall continue in force one year, and no longer.

Form and effect
of license. Par-
ty may sell on
payment, etc.
G. S. c. 50, § 17.

5. The secretary shall cause to be inserted in every license the names of such cities and towns as the applicant selects, with the sum to be paid to the respective treasurers thereof annexed, and shall receive from the applicant one dollar for each city or town so inserted. Every person so licensed may sell, as aforesaid, any goods, wares and merchandise, not prohibited in section three, in any city or town mentioned in his license, upon first paying the sum so required to the treasurer of such city or town, who shall certify on the face of the license the sum so received.

Fees for license.
Ibid. § 18.

6. Every person licensed under the two preceding sections shall pay to the treasurer of each city or town mentioned in his license the sums following: for every town containing not more than one thousand inhabitants, according to the United States census next preceding the date of his license, three dollars; for every town containing more than one thousand, and not more than two thousand inhabitants, six dollars; for every town containing more than two thousand, and not more than three thousand inhabitants, eight dollars; for every town containing more than three thousand, and not more than four thousand inhabitants, ten dollars; and for every city and town containing more than four thousand inhabitants, ten dollars; and one dollar for every one thousand inhabitants over four thousand contained therein; but the sum so to be paid to a treasurer shall in no case exceed twenty-five dollars.

Residents pay-
ing taxes, etc.,
may be licensed
without fee.
Ibid. § 19.

7. Any person resident paying taxes upon his stock in trade, and qualified to vote in a city or town, may there expose to sale and sell goods, wares or merchandise upon obtaining a license, pursuant to the provisions of sections four and five, and shall not be required to pay to the treasurer of such city or town any sum therefor.

State licenses.
Ibid. § 20.

8. The secretary, upon the conditions required in section four, may grant special state licenses, upon payment by the applicant

of fifty dollars for each license; and the person so licensed may expose to sale any goods, wares or merchandise not prohibited in any city or town. He may also grant, as aforesaid, upon payment by the applicant of one dollar for each county mentioned therein, special county licenses; and the person so licensed may expose to sale within such counties any tin, britannia, glass, earthen, iron, plated or wooden wares, of the manufactures of the United States, or any other goods, wares or merchandise manufactured by himself or his employer, and not prohibited in section three, upon tendering to the treasurer of each county mentioned in said license, respectively, the sums following: for Suffolk, Essex, Middlesex and Worcester, each four dollars; for Norfolk, Berkshire, Hampden, Bristol and Plymouth, each three dollars; for Franklin, Hampshire and Barnstable, each two dollars; for Nantucket, one dollar; for the county of Dukes County, one dollar. And the county treasurers, respectively, upon the receipt of any sum, as aforesaid, shall certify the amount so received on the face of the license.

9. The secretary shall keep a record of all licenses granted, with the number of each, the name and residence of the persons licensed, the counties, cities, and towns mentioned therein, of all special state licenses, and of all transfers of licenses. The treasurers of the counties, cities, and towns shall severally keep records of all licenses upon which the sums provided in this chapter have been paid, with the number of each, the name and residence of the persons licensed, and the sums received thereon; and all such records shall be open for public inspection.

10. All sums paid to the secretary, under this chapter, shall be for the use of the state; and all sums paid to the treasurer of a county, city or town shall be for the use of such county, city, or town.

11. A license granted under the provisions of section four or seven may be transferred by the secretary, upon application therefor, and upon evidence furnished by the applicant like that required for granting a license. The person to whom it is transferred shall thereafter be liable in all respects as if he were the person originally licensed. No person shall sell under such license, except the person named therein, or in such transfer.

1864, c. 151, § 2.
1870, c. 331.

County license.

Records of
licenses.
G. S. c. 50, § 21

Sums paid for
licenses, how
appropriated.
Ibid. § 22.

Licenses may
be transferred
Ibid. § 23.

Persons licensed to post name, etc., on parcels or vehicle, and exhibit license on demand, etc. G. S. c. 50, § 24.

12. Every person licensed to peddle, as hereinbefore provided, shall post his name, residence, and the number of his license in a conspicuous manner upon his parcels or vehicle, and when such license is demanded of him by any mayor, alderman, selectman, town or city treasurer or clerk, constable, police officer, or justice of the peace, shall forthwith exhibit it; and if he neglects or refuses so to do, shall be subject to the same penalty as if he had no license. So much of chapter fifty of the General Statutes as relates to hawkers and pedlers, or a synopsis thereof, shall be printed on every license.

Licenses, when not to protect party, etc. Shall be void if, etc. Ibid. § 25.

13. No license to go about offering for sale or selling, as aforesaid, shall operate to defeat or bar a prosecution against the person licensed, if it is proved that he exposed to sale any article, except such as are permitted in section one, in any county, city, or town where he was not licensed to sell, or in which he had not paid the sum mentioned in his license; but no person so licensed shall be required to make payment to the treasurer of any county, city, or town before he is prepared to trade therein. The license of any person convicted of a violation of any provision of this or the ten preceding sections shall be void.

Penalty for counterfeiting, etc., licenses and selling without license. Ibid. § 26. 1870, c. 331.

14. Whoever counterfeits or forges a license, or has a counterfeited or forged license in his possession, with intent to utter or use the same as true, knowing it to be false or counterfeit, or attempts to sell under a license which has expired, or is forfeited, or which was not granted, or has not been transferred to him, shall forfeit a sum not less than fifty dollars, nor exceeding one thousand dollars.

Penalty for unauthorized sales. G. S. c. 50, § 27. 1869, c. 12. 1870, c. 331. 12 Cush. 493. 14 Gray, 29. 2 Allen, 61.

15. Whoever goes from town to town, or from place to place, or from dwelling-house to dwelling-house, carrying for sale or exposing to sale any goods, wares, or merchandise named in section three, or carries for sale, or exposes for sale, any other goods, wares or merchandise, or takes a residence in any town for that purpose for a less term than one year, except as hereinbefore provided, shall forfeit a sum not less than fifty dollars, nor exceeding two hundred dollars for each offence. Police courts and trial justices may, in their discretion, exercise jurisdiction over offences described in this section, and in such cases may impose a fine not exceeding fifty dollars.

Hawkers, etc., licensed as auctioneers, not

16. No hawker, pedler, or itinerant trader, holding an auctioneer's license, shall sell or expose for sale by public auction any

goods, wares, or merchandise in any other city or town than that from whose authorities such license was obtained; nor in any place in such city or town except such as shall be expressly described or set forth in said license.

to sell, etc., in any other city or town, etc.

G. S. c. 50, § 23.

17. All licenses hereafter granted to hawkers and pedlers, under the fiftieth chapter of the General Statutes, shall bear date the day they are issued, and shall continue in force one year from such date.

Licenses, date and duration of. 1864, c. 151, § 1.

18. It shall be the duty of constables and police officers, within their respective towns and cities, to arrest and prosecute any person whom they may have reason to believe guilty of violating the provisions of said fiftieth chapter, relating to hawkers and pedlers; and one-half of any forfeiture which may be incurred and recovered under the twenty-seventh section¹ of said chapter shall be paid to the complainant.

Municipal officers shall prosecute for violations.

Ibid. § 3.

Forfeitures.

19. The secretary of the commonwealth is hereby authorized to grant a special license to any disabled soldier or sailor belonging to this commonwealth, according to the provisions of the twentieth section of the fiftieth chapter of the General Statutes [§ 8 of this digest], without the payment of any sum therefor, upon satisfactory evidence of the identity of such soldier or sailor; and that he is wholly or partially disabled by reason of wounds received in the service of the United States, or by sickness or disability contracted therein; and has received an honorable discharge from said service.

Disabled soldiers and sailors not to pay fee. 1866, c. 197, § 1.

HAY AND HAY SCALES.

STATUTES.

1. In cities in which the city council and in towns in which the inhabitants shall adopt² this and the three following sections, the mayor and aldermen and selectmen may, from time to time, appoint, for a term not exceeding one year, some person or per-

Superintendent of hay scales, and weighers of hay to be appointed. G. S. c. 49, § 72.

¹ Section 15 of the text on p. 370.

² Adopted by the city council Aug. 20, 1850.

- G. S. c. 49, § 72. sons to have the superintendence of the hay scales belonging to their place, who shall weigh hay offered for sale therein, and any other article offered to be weighed.
- Their duty.
Ibid. § 73. 2. The persons so appointed shall conform to all such rules and regulations as shall be established by the city council or selectmen respectively concerning the hay scales, and the compensation or fees for weighing hay and other articles.
- May be removed.
Ibid. § 74. 3. The mayor and aldermen or selectmen may remove any weigher of hay, and fill any vacancy that may occur from death or otherwise.
- Penalty for setting up hay scales without authority.
Ibid. § 75. 4. If a person not so appointed sets up hay scales in a town or city, for the purpose of weighing hay or other articles, he shall forfeit twenty dollars a month so long as the same are continued, to be recovered in an action of tort and appropriated to the use of the city or town.¹
- Pressed hay, how branded.
Ibid. § 76. 5. Pressed hay offered for sale shall be branded upon the crate enclosing it with the first letter of the Christian name and the whole of the surname of the person packing and screwing or otherwise pressing said hay, and with the name of the city or town and state where the hay is pressed.
- Forfeiture for selling without brand.
Ibid. § 77. 6. Pressed hay offered for sale without being so branded shall be forfeited, one-half to the person or persons prosecuting therefor, and the other half to the use of the city or town where the same is so offered for sale, and may be seized and libelled. .
- Inspectors of bundle hay, appointment of; to be sworn, etc.
Ibid. § 78. 7. The mayor and aldermen and selectmen of each city and town in which bale or bundle hay is sold may, on the petition of ten or more legal voters of such city or town, annually appoint one or more persons as inspectors of bale or bundle hay, who shall be sworn, and may remove any inspector so appointed, and fill any vacancy that may occur from death or otherwise.
- Duties of inspector.
Ibid. § 79. 8. Each inspector shall inspect and weigh all bale or bundle hay within the limits of the city, town, or ward for which he may be appointed, when requested so to do by the owner or vendor.
- Bundle hay, etc., how num- 9. Bales or bundles of hay so inspected which are found to be sweet, of good quality, and free from damage or improper

¹ No action lies to recover the price of hay sold by the ton when weighed on scales not provided by the buyer which have not been sealed as required by Gen. Sts., c. 51, § 16. 109 Mass. 220.

mixture, shall be branded or marked *No. 1*. Bales or bundles found to be sweet, and free from damage or improper mixture, but consisting of hay of a secondary quality, shall be branded or marked *No. 2*. Bales or bundles found to be wet, or in any way damaged, or which shall contain straw or other substances not valuable as hay, shall be branded or marked *Bad*. Each bale or bundle so inspected shall be branded or marked with the first letter of the Christian name and the whole of the surname of the inspector, and the name of the place for which he is inspector, together with the month and year when inspected, and also the net weight of the bundle.

bered and
marked.
G. S. c. 49, § 80.

Numbers and
marks.

10. Each inspector shall furnish himself with proper scales, weights, seals, and other suitable instruments for the purposes aforesaid.

Inspectors to
furnish weights,
etc.
Ibid. § 81.

11. The fees for inspecting, weighing, and marking hay, as provided for in this chapter, shall be fixed by the respective officers having the power of appointment, and shall be paid by the employer of the inspector.

Fees.
Ibid. § 82.

12. Whoever sells bale or bundle hay in a place where an inspector is appointed, which has not been inspected and weighed as herein provided, shall forfeit for each bale or bundle so sold two dollars; but no inspection need be made where the vendor and vendee agree to waive an inspection.

Penalty for sell-
ing without
inspection, etc.
Ibid. § 83.

13. All the provisions in the preceding twelve sections relating to the inspection, weighing, branding, and sale of pressed or bundle hay, shall also apply to pressed or bundle straw.

Foregoing pro-
visions to apply
to straw.
1861, c. 67.

ORDINANCE.¹

SECTION 1. The board of aldermen shall appoint suitable places in the streets or squares of the city, as stands for the sale of hay and straw.

Stands for sale
of hay and
straw.
Aug. 20, 1850.

SECT. 2. The owner or driver of any wagon, cart, sled, or other carriage containing hay or straw for

Penalty for
standing in any
other place for

¹ An ordinance relating to the weighing of hay and other articles, passed August 20, 1850, amended April 13, 1867.

sale of hay or
straw.
Aug. 20, 1850.

sale, who stands for the sale of such hay or straw in any other street, square, or place whatsoever, than one of those so appointed by the board of aldermen, shall be liable to a penalty not exceeding fifty dollars.

Scales to be
established, etc.
Ibid.

SECT. 3. The board of aldermen shall establish from time to time a sufficient number of public scales for the weighing of hay and other articles, and cause the same to be erected, and furnished with decimal weights, which shall be used in all cases; and the mayor, by and with the advice and consent of the said board, shall appoint suitable persons to have the superintendence of the same, and to weigh hay and other articles, according to law.

Weighers to be
appointed.

Duties of
weighers.
Ibid.

SECT. 4. The persons so appointed shall attend personally at the scales which may be assigned to them respectively, every day through the year, — Sundays, public fasts, thanksgivings, Christmas, Washington's birthday, and the anniversary of American Independence excepted, — from sunrise to sunset, during the months of December, January, and February; and from seven o'clock in the forenoon until six o'clock in the afternoon, during the months of March, April, May, June, July, August, September, October, and November, — and shall deliver to the driver of every load of hay or straw weighed a certificate, in such form as is hereinafter provided; and shall keep an account of all hay and other articles weighed at said scales, in books furnished by the board of aldermen, which shall be

Office hours.
April 13, 1867.

always open to their inspection, and when filled shall be deposited with the city clerk. April 13, 1867.

SECT. 5. The accounts to be kept by said weighers, and the certificates to be given to the drivers of loads, as mentioned in the preceding section, shall specify the name of the owner or driver, the town from which the load shall have been driven, the weight and tare, the amount of fees received, and the date of the certificate. Form of weighers' accounts and certificates. Aug. 20, 1850.

SECT. 6. The fees for weighing hay and other articles to be received by the said weighers, and by them paid over to the city treasurer as provided by the city ordinances, shall be as follows, to wit: one cent for every hundred pounds of hay, straw, and all other articles except coal; and one-half of a cent for every hundred pounds of anthracite or other coal: *provided*, that the fee for weighing any article other than hay or straw shall never be less than ten cents. The cart or vehicle containing the same, and other tare, shall be weighed without any charge. And no fees shall be taken for any weighing done on account of the city. Fees for weighing. Ibid. April 13, 1867.

SECT. 7. The said weighers shall receive such compensation as the city council may from time to time determine.¹ Compensation of weighers. Aug. 20, 1850.

¹ The superintendents of public scales are allowed to retain *three-fifths* of their gross receipts — the remaining *two-fifths*, less necessary expenses, are to be paid quarterly into the city treasury. See order of city council, April 26, 1867.

G. S. c. 49, §§ 72,
73, 74, 75,
adopted.
Aug. 20, 1850.

SECT. 8. The seventy-second, seventy-third, seventy-fourth and seventy-fifth sections of the forty-ninth chapter of the General Statutes are hereby adopted.

HEALTH.

STATUTES.¹

Board of health.
§ 40 Charter.
116 Mass. 254.

1. All the power and authority now by law vested in the city council, or in the board of mayor and aldermen, relative to the public health and the quarantine of vessels, shall continue to be vested in the city council, to be carried into execution by the appointment of one or more health commissioners; or in such other manner as the health, cleanliness, comfort and order of the city may, in their judgment, require, subject to such alterations as the legislature may from time to time adopt. The powers and duties above named may be exercised and carried into effect by the city council in any manner which they may prescribe, or through the agency of any persons to whom they may delegate the same, notwithstanding a personal exercise of the same, collectively or individually, is prescribed by previous legislation; and the city council may constitute either branch, or any committee of their number, whether joint or separate, the board of health, for all or for particular purposes.

Board may ap-
point physician.
G. S. c. 26, § 3.

2. Every board of health may appoint a physician to the board, who shall hold his office during its pleasure.

¹ By chapter 420, of the acts of 1869, a state board of health was established, consisting of seven persons, to hold office for seven years. "They shall make sanitary investigations and inquiries in respect to the people, the causes of disease, and especially of epidemics and the sources of mortality, and the effects of localities, employments, conditions and circumstances, on the public health; and they shall gather such information in respect to those matters as they may deem proper, for diffusion among the people. They shall advise the government in regard to the location of any public institutions."

3. The board shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of persons employed by it in the execution of the health laws and of its own regulations.

Compensation
of physician,
etc.
G. S. c. 26, § 4.

4. Boards of health in the several cities and towns in this commonwealth may appoint an agent or agents to act for them, respectively, in cases of emergency, or when such board cannot be conveniently assembled; and such agent so appointed shall have, and may exercise, all the authority which the board of health appointing him had; but he shall, within two days, report his action in each case to the board of health for their approval, and shall be directly responsible to, and under the control and direction of, the board of health from which he received such appointment.

Boards of
health may
delegate agents.
1866, c. 271, § 1.

NUISANCES, CONTAGION, ETC.

5. The board shall make such regulations as it judges necessary for the public health and safety, respecting nuisances, sources of filth, and causes of sickness within its town, or on board of vessels within its harbor, and respecting articles which are capable of containing or conveying infection or contagion, or of creating sickness, brought into, or conveyed from, its town, or into, or from, any vessel. Whoever violates any such regulation shall forfeit a sum not exceeding one hundred dollars.

Board to make
regulations re-
specting nu-
isances, etc.
G. S. c. 26, § 5.
12 Pick. 184.
98 Mass. 39.
16 Gray, 231.
See 1866, c. 211.

6. Notice shall be given by the board of all regulations made by it, by publishing the same in some newspaper of its town, or where there is no such newspaper by posting them up in some public place in the town. Such notice shall be deemed legal notice to all persons.

Board to give
notice of regu-
lations.
Ibid. § 6.

7. The board shall examine into all nuisances, sources of filth, and causes of sickness within its town, or in any vessel within the harbor of such town, that may in its opinion be injurious to the health of the inhabitants, and the same shall destroy, remove, or prevent, as the case may require.¹

To examine into
and abate nu-
isances, etc.
Ibid. § 7.
11 Met. 572.

¹ Police regulations to direct the use of private property so as to prevent its being pernicious to the citizens at large are not void, although they may in some measure interfere with private rights without providing for compensation. It is not only the right, but the duty, of the city government of Boston,

To order nuisances, etc., abated.

Penalty for refusing.

G. S. c. 26, § 8.

c. 87, § 5.

c. 88, §§ 40, 42.

1862, c. 74.

98 Mass. 431.

8. The board or the health officer shall order the owner or occupant at his own expense to remove any nuisance, source of filth, or cause of sickness, found on private property, within twenty-four hours, or such other time as it deems reasonable after notice served as provided in the following section; and if the owner or occupant neglects so to do, he shall forfeit a sum not exceeding twenty dollars for every day during which he knowingly permits such nuisance or cause of sickness to remain after the time prescribed for the removal thereof.¹

Order for abatement, how served.

G. S. c. 26, § 9.

c. 87, § 5.

c. 88, §§ 40, 42.

1862, c. 74.

98 Mass. 431.

9. Such order shall be made in writing, and served by any person competent to serve a notice in a civil suit, personally on the owner, occupant, or his authorized agent; or a copy of the order may be left at the last and usual place of abode of the owner, occupant, or agent, if he is known and within the State. But if the premises are unoccupied, and the residence of the owner or agent is unknown or without the State, the notice may be served by posting the same on the premises and advertising in one or more public newspapers in such manner and for such length of time as the board or health officer may direct.

Owner not complying, board to remove nuisance at his expense.

G. S. c. 26, § 10,

c. 87, § 5,

c. 88, §§ 40, 42.

1862, c. 74.

11 Allen, 398.

98 Mass. 431.

10. If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby shall be paid by the owner, occupant, or other person who caused or permitted the same, if he has had actual notice from the board of health of the existence thereof.

Board may notify occupants of unfit dwelling-places to quit, etc.

G. S. c. 26, § 11.

11 Met. 572.

11. The board, when satisfied upon due examination that any cellar, room, tenement,² or building in its town, occupied as a dwelling-place, has become, by reason of the number of occupants, or want of cleanliness, or other cause, unfit for such purpose and a cause of nuisance or sickness to the occupants, or the public,

so far as they may be able, to remove any nuisance which may endanger the health of the citizens. And they have necessarily the power of deciding in what manner this shall be done, and their decision is conclusive, unless they transcend the powers conferred on them by the city charter. 12 Pick. 184.

¹ In order to amount to a nuisance, it is not necessary that there should be a corruption of the atmosphere such as to be dangerous to health; it is sufficient that the effluvia are offensive to the senses and render habitations uncomfortable. 11 Met. 572. See also 13 Allen, 95.

² See tenement houses, under the title of "Buildings," *ante*, p. 115.

may issue a notice in writing to such occupants, or any of them, requiring the premises to be put into a proper condition as to cleanliness, or, if they see fit, requiring the occupants to remove or quit the premises within such time as the board may deem reasonable. If the person so notified, or any of them, neglect or refuse to comply with the terms of the notice, the board may cause the premises to be properly cleansed at the expense of the owners, or may remove the occupants forcibly and close up the premises, and the same shall not be again occupied as a dwelling-place without the consent in writing of the board. If the owner thereafter occupies or knowingly permits the same to be occupied without such permission in writing, he shall forfeit a sum not less than ten nor more than fifty dollars.

12. When a person is convicted on an indictment for a common nuisance injurious to the public health, the court in their discretion may order it to be removed or destroyed at the expense of the defendant, under the direction of the board of health; and the form of the warrant to the sheriff or other officer may be varied accordingly.

When a party is convicted of a nuisance, court may order it destroyed. Ibid. § 12.

13. The superior court, or a justice thereof in term time or vacation, may, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same until the matter shall be decided by a jury or otherwise; may enforce such injunction according to the course of proceedings in chancery; and may dissolve the same when the court or one of the justices shall think proper.

Court may issue injunction in cases of nuisance. Ibid. § 13.

14. When the board thinks it necessary for the preservation of the lives or health of the inhabitants, to enter any land, building, premises or vessel within its town, for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and said board or any agent thereof sent for that purpose shall be refused such entry, any member of the board or such agent may make complaint under oath to any justice of any court of record or to two justices of the peace of the county, stating the facts of the case so far as he has knowledge thereof, and said justice or justices may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such agent of the board, or to any constable of such town, commanding him to take

Board may enter premises to examine into cause of sickness, etc. 1873, c. 2.

Warrant may be issued.

1873, c. 2.

Nuisance may
be abated.May permit re-
moval of in-
fected articles,
etc.

G. S. c. 26, § 15.

sufficient aid, and at any reasonable time repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and the same to destroy, remove or prevent, under the directions of said board.

15. The board may grant permits for the removal of any nuisance, infected articles, or sick person, within the limits of its town, when it thinks it safe and proper so to do.

INFECTIOUS DISEASES.

Shall make pro-
vision for per-
sons infected.

Ibid. § 16.

2 Cush. 52.

16. When any person coming from abroad or residing in any town in this state is infected, or lately has been infected, with the plague or other sickness dangerous to the public health, except as is otherwise provided in this chapter, the board shall make effectual provision in the manner which it judges best for the safety of the inhabitants, by removing such person to a separate house or otherwise, and by providing nurses and other assistants and necessaries, which shall be at the charge of the person himself, his parents, or master, if able, otherwise at the charge of the town to which he belongs; and, if he is not an inhabitant of any town, at the charge of the commonwealth.

If infected per-
son cannot be
removed, others
may be, etc.

Ibid. § 17.

17. If the infected person cannot be removed without danger to his health, the board shall make provision for him as directed in the preceding section in the house in which he may be; and may cause the persons in the neighborhood to be removed, and take such other measures as it judges necessary for the safety of the inhabitants.

Persons may be
stationed in
places border-
ing on other
states, to exam-
ine, etc.

Ibid. § 18.

18. The board of health of any town near to or bordering upon either of the neighboring states may appoint, by writing, suitable persons to attend at places by which travellers may pass from infected places in other states; who may examine such travellers as it suspects of bringing any infection dangerous to the public health, and if need be may restrain them from travelling until licensed thereto by the board of health of the town to which such person may come. A traveller coming from such infected place, who shall without such license travel within this state (except to return by the most direct way to the state from whence he came), after he has been cautioned to depart by the persons so appointed, shall forfeit a sum not exceeding one hundred dollars.

19. Two justices of the peace may, if need be, make out a warrant, directed to the sheriff of the county, or his deputy, or to any constable, requiring them, under the direction of the board, to remove any person infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessities, for the accommodation, safety, and relief of the sick.

Two justices of the peace may issue warrant to remove sick persons.

G. S. c. 26, § 19.

20. When, upon the application of the board, it appears to a justice of the peace that there is just cause to suspect that any baggage, clothing, or goods found within the town, are infected with the plague or other disease which may be dangerous to the public health, the justice shall, by warrant directed to the sheriff or his deputy, or to any constable, require him to impress so many men as said justice may judge necessary to secure such baggage, clothing, or other goods, and to post said men as a guard over the house or place where such articles are lodged; who shall take effectual care to prevent persons from removing or coming near the same, until due inquiry is made into the circumstances.

One justice may issue warrant to sheriff to secure infected articles, who may impress aid.

Ibid. § 20.

21. The justice may, by the same warrant, if it appears to him necessary, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe-keeping of such articles; and the board may cause them to be removed thereto, or otherwise detained, until, in the opinion of the board, they are freed from infection.

Sheriff may take houses and stores, etc., for safe-keeping of goods, etc.

Ibid. § 21.

22. The officers, in the execution of the warrant, shall, if need be, break open any house, shop, or other place mentioned in the warrant where such articles are; and may require such aid as is necessary to effect the execution of the warrant. Whoever neglects or refuses to assist in the execution of the warrant, after being commanded to assist by either of said officers, shall forfeit a sum not exceeding ten dollars.

Officers may break open houses, shops, etc., and command aid.

Ibid. § 22.

23. The charges of securing such articles, and transporting and purifying the same, shall be paid by the owners, at such rates and prices as may be determined by the board.

Expenses to be paid by owners of goods.

Ibid. § 23.

24. When a sheriff or other officer impresses or takes up any houses, stores, lodging, or other necessities, or impresses men, as provided in this chapter, the several parties interested shall be en-

Town to make compensation for houses, etc.,

or services im-
pressed.
G. S. c. 26, § 24.
Removal of pris-
oners attacked
with disease.
Ibid. § 25.

Return of re-
moval to be
made to court.
Such removal
not an escape.
Ibid. § 26.

titled to a just compensation therefor, to be paid by the town in which such persons or property are so impressed.

25. When a person confined in a common jail, house of correction, or workhouse, has a disease which in the opinion of the physician of the board, or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, by its order in writing, direct the removal of such person to some hospital or other place of safety, there to be provided for and securely kept so as to prevent his escape until its further order. If such person recovers from the disease, he shall be returned to said prison or other place of confinement.

26. If the person so removed is committed by order of court or under judicial process, the order of his removal, or a copy thereof, attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

VACCINATION.

Parents, etc., to
cause children,
etc., to be vacci-
nated.
Penalty for
neglect.
Ibid. § 27.

27. Parents and guardians shall cause their children and wards to be vaccinated before they attain the age of two years, and re-vaccinated whenever the selectmen or mayor and aldermen shall after five years from the last vaccination require it. For every year's neglect the party offending shall forfeit the sum of five dollars.

Selectmen, etc.
to enforce vacci-
nation, etc.
Penalty for neg-
lect.
Ibid. § 28.

28. The selectmen and mayor and aldermen shall require and enforce the vaccination of all the inhabitants, and, whenever in their opinion the public health requires, the re-vaccination of all the inhabitants who do not prove to their satisfaction that they have been successfully vaccinated or re-vaccinated within five years. All persons over twenty-one years of age, not under guardianship, who neglect to comply with any such requirement, shall forfeit the sum of five dollars.

City to provide
means.
Ibid. § 29.

29. Towns shall furnish the means of vaccination to such of their inhabitants as are unable to pay for the same.

Inmates of man-
ufactories, alma-

30. Incorporated manufacturing companies; superintendents of almshouses, state reform and industrial schools, lunatic hospitals,

and other places where the poor and sick are received ; masters of houses, etc., to be vaccinated. G. S. c. 26, § 30.

houses of correction, jailers, keepers of prisons, the warden of the state prison ; and superintendents or officers of all other institutions supported or aided by the state, shall, at the expense of their respective establishments or institutions, cause all inmates thereof to be vaccinated immediately upon their entrance thereto, unless they produce sufficient evidence of previous successful vaccination within five years.

31. Each town may make further provision for the vaccination of its inhabitants, under the direction of the board or a committee chosen for the purpose.

Towns may make further provision for vaccination. Ibid. § 31.

QUARANTINE.

32. A town may establish a quarantine ground in a suitable place either within or without its own limits ; but if such place is without its limits, the assent of the town within whose limits it may be established shall be first obtained.

City may establish a quarantine ground. Ibid. § 32.

33. Two or more towns may at their joint expense establish a quarantine ground for their common use in any suitable place either within or without their own limits ; but if such place is without their limits, they shall first obtain the assent of the town within whose limits it may be.

Two or more may establish a common quarantine ground. Ibid. § 33.

34. The board of health in each seaport town may from time to time establish the quarantine to be performed by vessels arriving within its harbor ; and may make such quarantine regulations as it judges necessary for the health and safety of the inhabitants.

Board of health may establish quarantine of vessels. Ibid. § 34.

35. Whenever quarantine is imposed on any vessel coming from abroad, and the owner, consignee, master, or other person interested in such vessel or her cargo, shall be interrogated by any member of the board of health in his official capacity, or by the visiting physician of said board, respecting any circumstance or event touching the health of the crew or passengers on such vessel, or any infection suspected in the cargo, from the time of her first engaging upon the voyage she may then be terminating, and the said owner, consignee, master or other person interested, as aforesaid, shall make any false or unfounded declaration respecting the points under examination, every such owner, con-

Penalty if owner or master of vessel make false declaration. Spec. laws, v. 3, p. 211, § 3.

Spec. laws, v. 3, signee, master or other interested person, upon conviction thereof, c. 211.

in manner as pointed out in the eighth section of the law to which this is an addition [St. 1799, c. 10, § 8], shall forfeit and pay a fine not exceeding five hundred dollars, suffer six months' imprisonment, either or both, at the discretion of the court having cognizance of such offence.

Quarantine regulations to extend to all. etc. G. S. c. 26, § 35.

36. Such regulations shall extend to all persons, goods, and effects arriving in such vessels, and to all persons who may visit or go on board of the same.¹

Penalty for violation after notice.

Ibid. § 36.

37. Whoever violates any such regulation after notice thereof has been given in the manner before provided in this chapter shall forfeit a sum not less than five, nor more than five hundred, dollars.

Vessels suspected of infection to be ordered to quarantine. Ibid. § 37.

38. The board in each seaport town may at all times cause a vessel arriving in such port, when such vessel or the cargo thereof is in its opinion foul or infected so as to endanger the public health, to be removed to the quarantine ground and thoroughly purified at the expense of the owners, consignees, or persons in possession of the same; and may cause all persons arriving in or going on board of such vessel, or handling the cargo, to be removed to any hospital under the care of the board, there to remain under their orders.

Penalty, if master, seaman, etc., refuse to answer on oath, etc. Ibid. § 38.

39. If a master, seaman or passenger belonging to a vessel, on board of which any infection then is, or has lately been, or is suspected to have been, or which has been at, or has come from, a port where any infectious distemper prevails that may endanger the public health, refuses to make answer on oath to such questions as may be asked him relating to such infection or distemper by the board of health of the town to which such vessel may come (which oath any member of the board may administer), such master, seaman, or passenger shall forfeit a sum not exceeding two hundred dollars; and, if not able to pay said sum, he shall suffer six months' imprisonment.

Quarantine expenses, how paid by person or owner. Ibid. § 39.

40. All expenses incurred on account of any person, vessel, or goods, under quarantine regulations, shall be paid by such person or the owner of such vessel or goods respectively.

¹ The quarantine fees are established by the Board of Health.

PUBLIC URINALS.

41. The city of Boston, by vote of its city council, shall have power to erect and maintain urinals for public use in any street, way, court, public square, common, or common lands in said city, and likewise in the public garden, so called, lying to the eastward of Arlington street therein. And any owner of land who suffers any injury in his property by reason of the construction of any urinal as aforesaid, may, at any time within one year after the construction is commenced, apply to the superior court for Suffolk county for assessment of his damages by a jury, and have his damages ascertained in the manner provided where land is taken in laying out highways.

Public urinals may be maintained in Boston by vote of city council.
1876, c. 65.

HOSPITALS AND DANGEROUS DISEASES.

42. Any town may establish within its limits, and be constantly provided with, one or more hospitals for the reception of persons having a disease dangerous to the public health.

Hospitals may be provided by towns.
G. S. c. 26, § 40.

43. Such hospitals shall be subject to the orders and regulations of the board, or of a committee of the town appointed for that purpose.

To be under orders of board of health.
Ibid. § 41.

44. No such hospital shall be established within one hundred rods of an inhabited dwelling-house situated in an adjoining town, without the consent of such town.

Hospitals not to be within, etc.
Ibid. § 42.

45. When a hospital is so established, the physician, nurses, attendants, the persons sick therein, and all persons approaching or coming within the limits of the same, and all furniture and other articles used or brought there, shall be subject to such regulations as may be made by the board of health or the committee appointed for that purpose.

Physicians, etc., in hospitals subject to board of health.
Ibid. § 43.

46. The city of Boston is hereby authorized to erect, under directions of its board of health and inspector of buildings, any wooden buildings within the city, for hospital purposes, the same to remain only so long as said board deems it necessary: *provided*, that every such hospital shall be constantly guarded outside by a competent force of at least three of the police of said city.

Boston may erect wooden buildings for hospital purposes.
1873, c. 4.
Proviso.

47. Whoever erects, occupies, or uses any building in any place, for a hospital, in such part thereof as the mayor and alder-

Hospital not to be erected or occupied with.

out consent of town or city authorities.
1870, c. 306.

men, or selectmen prohibit, shall forfeit a sum not exceeding fifty dollars for every month he so occupies or uses such building, and in like proportion for a longer or shorter time; and the supreme judicial court, or any one of the justices thereof, either in term time or vacation, may issue an injunction to prevent such erection, occupancy or use.

Board of health to provide hospital, etc., and remove sick, etc.
G. S. c. 26, § 44.

48. When a disease dangerous to the public health breaks out in any town, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best for their accommodation and the safety of the inhabitants; which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless the condition of such person will not admit of his removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and all persons residing in or in any way concerned within the same shall be subject to the regulations of the board as before provided.

Selectmen to give notice of infected places.
Ibid. § 45.
1873, c. 2, § 2.

49. When such disease is found to exist in a town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means which in their judgment shall be most effectual for the common safety. And whoever obstructs the selectmen, board of health, or their agent, in using such means to prevent the spreading of the infection, or wilfully removes, obliterates, defaces or handles the red flags or other signals so displayed, shall forfeit for each offence a sum not less than ten nor more than one hundred dollars.

Penalty on persons in hospitals, etc., for violating regulations.
G. S. c. 26, § 46.

50. If a physician or other person in any of the hospitals or places of reception before mentioned, or who attends, approaches, or is concerned with the same, violates any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, he shall for each offence forfeit a sum not less than ten nor more than one hundred dollars.

Householders to give notice of dangerous diseases.
Penalty.

51. When a householder knows that a person within his family is taken sick of small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells. If he

refuses or neglects to give such notice, he shall forfeit a sum not exceeding one hundred dollars. G. S. c. 26, § 47.

52. When a physician knows that any person whom he is called to visit is infected with small-pox or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town; and if he refuses or neglects to give such notice he shall forfeit for each offence a sum not less than fifty, nor more than one hundred dollars. Penalty on physician for not giving notice of dangerous disease. Ibid. § 48.

53. Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, and which are recoverable of a private person or corporation by virtue of any provisions of law, may be sued for and recovered in an action of contract. Expenses recoverable of individuals; how sued for. Ibid. § 49.

54. Fines and forfeitures incurred under general laws, the special laws applicable to a town, or the by-laws and regulations of a town relating to health, shall inure to the use of such town. Fines and forfeitures to inure to use of town. Ibid. § 50. See G. S. c. 19, § 15. 6 Cush. 408.

55. The provisions of sections sixteen, seventeen, forty-eight, forty-nine and fifty,¹ so far as they confer authority for the removal of patients from their homes, except in case of persons residing in boarding-houses, hotels, or where two or more families occupy the same dwelling, and in all other cases where in the opinion of the board of health and the attending physician the case cannot be properly isolated, shall not apply to small-pox. Small-pox. G. S. c. 26, § 51. 1872, c. 189.

56. In any case arising under the provisions of the twenty-sixth chapter of the General Statutes and the acts in addition thereto, in which the board of health shall have acted, said board of health shall retain charge of the same to the exclusion of the overseers of the poor of any city or town. Board of health to retain charge of case, to exclusion of overseers of the poor. 1874, c. 121, § 1.

57. All reasonable expenses which have been heretofore, or may hereafter be, incurred by the board of health of any city or town, in making the provision required by law for any person infected with small-pox or any other disease dangerous to the public health, shall be paid by the person himself, his parents, or master, if able; otherwise by the town in which he has a legal settlement, and if he has no settlement in any town, by the commonwealth, in which case the bills therefor shall be approved by the board of state charities. Expenses to be paid by the person infected. Ibid. § 2.

¹ Sections 16, 17, 44, 45, and 46 of chap. 26, G. S.

PROTECTION OF INFANTS.

Persons taking
infants to board
to notify the
board of health.
1876, c. 158, § 1.

58. Whoever engages in the business of taking nursing infants, or infants under three years of age, to board, or of entertaining or boarding more than two such infants in the same house at the same time, shall, within two days after the reception of each such infant beyond the first two, give written notice to the board of health of the city or town where such infant is so to be entertained or boarded, specifying the name and age of the child and the name and place of residence of the party so undertaking its care; and such board of health shall have the right to enter and inspect said house and premises while said business is being carried on, and to direct and enforce such sanitary measures respecting such children and premises as it may deem proper.

Board of health
may inspect
premises.

Penalties.
Ibid. § 2.

59. Any person violating any of the provisions of this act, or refusing admission to such board of health for the purpose mentioned in the preceding section, shall, on conviction thereof, be punished by a fine of not less than fifty nor more than five hundred dollars.

OFFENSIVE TRADES.

Board to assign
places for exer-
cising offensive
trades, and may
prohibit.
G. S. c. 26, § 52.
6 Gray, 473.
16 Gray, 231.
8 Allen, 325.
11 Allen, 398.

60. The board shall from time to time assign certain places for the exercising of any trade or employment which is a nuisance, or hurtful to the inhabitants, or dangerous to the public health, or the exercise of which is attended by noisome and injurious odors, or is otherwise injurious to their estates, and may prohibit the exercise of the same in places not so assigned; the board may also forbid the exercise of such trade or employment within the limits of the town or in any particular locality thereof.¹ All such assignments shall be entered in the records, and may be revoked when the board shall think proper.

¹ Under Gen. Sts. c. 26, § 52, the selectmen of a town, acting as a board of health, may by general order forbid the exercise of an offensive trade or employment therein, without first giving notice to those who at the time are engaged in carrying on the same. 8 Allen, 325.

Carrying on an offensive trade for twenty years in a place remote from buildings and public roads does not entitle the owner to continue it in the same place after houses have been built and roads laid out in the neighborhood, to the occupants of and travellers upon which it is a nuisance. 6 Gray, 473.

61. When it appears on a trial before the superior court for the county, upon a complaint made by any person, that any place or building so assigned has become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or is otherwise hurtful or dangerous to the neighborhood or to travellers, the court may revoke such assignment and prohibit the further use of such place or building for the exercise of either of the aforesaid trades or employments, and may cause such nuisance to be removed or prevented.

Superior court may, on complaint, revoke such assignment. G. S. c. 26, § 53.

62. A person injured either in his comfort or the enjoyment of his estate by such nuisance may have an action of tort for the damage sustained thereby.

Action for damages from nuisance. Ibid. § 54.

63. Orders of prohibition under section sixty shall be served upon the occupant or person having charge of the premises where such trade or employment is exercised. If the party upon whom such order is served, for twenty-four hours after such service refuses or neglects to obey the same, the board shall take all necessary measures to prevent such exercise; and the person so refusing or neglecting shall forfeit a sum not less than fifty, nor more than five hundred dollars.

Orders for prohibition, etc., to be served on occupant. If he refuses to obey, board may prevent. Penalty. Ibid. § 55. 11 Allen, 398.

64. Any person aggrieved by such order may appeal therefrom, and shall, within three days from the service thereof upon him, apply to the superior court, if in session in the county where such order is made, or in vacation to any justice of said court, for a jury; and such court or justice shall issue a warrant for a jury, to be impanelled at a time and place expressed in the warrant, in the manner provided in regard to the laying out of highways. Whenever any person, by mistake of law, or fact, or by accident, fails to appeal from any order of any board of health and to apply to the superior court or any justice thereof for a jury within the three days limited therefor by this section, such person may at any time thereafter appeal from such order and apply for a jury with the same effect as if done within the said three days: *provided*, that such person so appealing and applying shall make it appear to the court or justice that such failure was caused by mistake or accident: and *provided, also*, that such appeal and application shall be made within thirty days after service of such order upon such applicant.

Appeal by person aggrieved. Proceedings. Ibid. § 56.

1835, c. 263.

Trade not to be exercised meanwhile.

G. S. c. 26, § 57.

Verdict of jury may alter, etc., order; to be returned for acceptance, etc. Ibid. § 58.

Costs,—how and when assessed; on whom; and to what amount. Ibid. § 59.

Provisions of this chapter extend to cities. Ibid. § 60.

Slaughter-houses, etc., not to be erected without permission. 1871, c. 167, § 1. 1874, c. 308. 109 Mass. 315. 109 Mass. 320. See § 72.

65. During the pendency of the appeal such trade or employment shall not be exercised contrary to the order; and upon any violation of the same the appeal shall forthwith be dismissed.

66. The verdict of the jury, which may either alter the order, or affirm or annul it in full, shall be returned to the court for acceptance, as in case of highways; and said verdict, when accepted, shall have the authority and effect of an original order from which no appeal had been taken.

67. If the order is affirmed by the verdict, the town shall recover costs against the appellant; if it is annulled, the appellant shall recover damages and costs against the town; and if it is altered, the court may render such judgment as to costs as in their discretion may seem just.

68. The provisions of this chapter extend to cities so far as the same are not inconsistent with their several charters or acts in amendment thereof.

69. Whoever in any city or town erects, occupies or uses any building for carrying on therein the business of slaughtering cattle, sheep or other animals, or for melting or rendering establishments, or for other noxious or offensive trades and occupations, or permits or allows said trades or occupations to be carried on upon premises owned or occupied by him or them, without first obtaining the written consent and permission of the mayor and aldermen, or selectmen of such city or town, shall forfeit a sum not exceeding two hundred dollars for every month he or they so occupy or use such building or premises, and in like proportion for a longer or shorter time: *provided*, that the terms of this section shall not apply to any building or premises now occupied or used for the trades or occupations before described; but no person or persons or corporation now occupying or using any building or premises for the trades or occupations aforesaid, shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and aldermen or selectmen of the city or town in which such building or premises are situated, in the manner provided in this section.¹

¹ The accidental destruction by fire, after the time of the passage of the St. of 1871, c. 167, of the combustible parts of a building [in a town containing more than four thousand inhabitants], which had been used by its owner

70. Whenever in any city or town any building or premises are occupied or used by any person or persons or corporation for carrying on the business of slaughtering cattle, sheep or other animals, or for melting or rendering establishments, or for other noxious or offensive trades, the state board of health may, if in their judgment the public health or the public comfort and convenience shall require, order any person or persons or corporation carrying on said trades or occupations, to desist and cease from further carrying on said trades or occupations in such building or premises, and any person or persons or corporation continuing to occupy or use such building or premises for carrying on said trades or occupations after being ordered to desist and cease therefrom by said board, shall forfeit a sum not exceeding two hundred dollars for every month he or they continue to occupy and use such building or premises for carrying on said trades or occupations after being ordered to desist and cease therefrom by said board as aforesaid, and in like proportion for a longer or shorter time : *provided*, that on any application to said board to exercise the powers in this section conferred upon them, a time and place for hearing the parties shall be assigned by said board and due notice thereof given to the party against whom the application is made, and the order herein before provided shall only be issued after such notice and hearing.

State board of health may order persons carrying on offensive trades to desist.

1871, c. 167, § 2.
1874, c. 308.

114 Mass. c. 353.

Penalty.

Hearing to be had after notice.

71. The supreme judicial court, or any one of the justices thereof, in term time or vacation, shall have power to issue an injunction to prevent the erection, occupancy, use, enlargement or extension of any building or premises occupied or used for the trades or occupations aforesaid, without the written consent and permission provided in section one of this act being first obtained ; and also in like manner to enforce the orders of the state board of health issued under section two of this act.

Supreme judicial court may issue injunction to prevent erection, etc., of buildings to be occupied for offensive trades.

1871, c. 167, § 3.

72. The foregoing act (St. 1871, c. 167) shall not be so construed as to authorize the maintenance of a nuisance, or to affect the jurisdiction of the supreme judicial court or any justice there-

Provisions of 1871, c. 167, not to be construed as to permit

from a prior time for carrying on therein the business of slaughtering cattle, sheep or other animals, does not forfeit the owner's right to continue, without permission of the selectmen, the same business in a new building of no greater size or capacity, erected on the same site. 109 Mass. 320.

maintenance of
a nuisance.
1874, c. 230.

of, sitting in equity, to issue an injunction to prevent the continuance of a nuisance, upon the due application of any person injured thereby.

Transportation
of offal may be
regulated by
cities and towns.
1874, c. 225.

73. Any city or town may, by ordinance or by-law, regulate the transportation of the offal of slaughtered cattle, hogs, sheep or other animals, over, along or through any of the public streets or highways in such city or town; and may impose fines for the violation of such ordinance or by-law, not exceeding one hundred dollars for each offence.

BUTCHERS' SLAUGHTERING AND MELTING ASSOCIATION.

Incorporation of
association.
1870, c. 365, § 1.

74. By an act passed June 16, 1870, Horace W. Baxter, Horace W. Jordan, and B. Francis Ricker, their associates and successors, were made a corporation, by the name of the Butchers' Slaughtering and Melting Association, to be located in the town of Brighton, for the purpose of carrying on the business of buying and slaughtering cattle, sheep and other animals, and of melting and "rendering" establishments, subject, however, to the provisions hereinafter contained, and to all general laws now, or that may hereafter be, in force applicable to such corporations.

May take lands.
Ibid. § 2.
1876, c. 144, § 1.

75. Said corporation may take and hold, by purchase or otherwise, such parcel of land, not exceeding one hundred acres in extent, and situated in Brighton, within two miles of the Cattle Fair hotel, as the board of health of the city of Boston shall by vote determine to be suitable for the carrying on of said business; and said corporation shall, within sixty days from the time it shall take any land otherwise than by purchase, file in the office of the registry of deeds for the county wherein said lands lie, a description thereof, as certain as is required in a common conveyance of lands, together with a statement of the purpose for which the lands are taken, which description and statement shall be signed by the president of the corporation.

Shall erect
slaughter-
houses.
1870, c. 365, § 4.
1876, c. 144, § 1.

76. Said corporation shall proceed to build upon said land suitable buildings for the slaughtering of cattle, sheep and other animals, and for melting and rendering purposes, and all necessary stables and outbuildings. But no building shall be erected until the plans thereof, with all details of construction, shall have

been submitted to and approved by said board of health of the city of Boston, or some person designated by said board to examine said plans. All the business of said corporation shall be carried on in accordance with such regulations as said board shall from time to time establish and furnish in writing to the clerk of said corporation; and for each violation of any one of said regulations said corporation shall be liable to a fine of not less than twenty nor more than five hundred dollars, to be recovered by indictment against said corporation. Subject to the foregoing provisions, said corporation may manufacture and sell any of the usual products of said slaughtering and melting business, or may lease or permit other persons to use their buildings or parts thereof on such terms as may be agreed upon. And each member of said corporation shall have the right to slaughter on the said premises, subject to such regulations and such tariff of prices as said corporation may, by vote at any regular meeting, establish, and to the regulations of the said board of health as aforesaid. And any person engaged in slaughtering or other business on the premises of said corporation, who shall violate any of the said regulations of said board, shall be liable to the penalty herein before affixed to violations thereof by said corporation.

1870, c. 365, § 47.
1876, c. 144, § 1.

77. From and after the first day of June, in the year eighteen hundred and seventy-six, the business of slaughtering shall not be conducted within the limits of the city of Boston, except upon the premises of the butchers' slaughtering and melting association in said city.

Slaughtering to be done only at premises of association.
1876, c. 144, § 2.

78. The said association shall, within a reasonable time, slaughter all cattle, sheep and calves which may be brought to their premises for that purpose by persons not occupying tenements therein, whenever the accommodations under their control on said premises will permit. They shall also prepare the meat and other products of such animals for the market. They may charge, in addition to the offal from said animal, such price per head as may be mutually agreed upon; and, in case of disagreement as to price, the same shall be fixed by the board of health of the city of Boston.

Association to slaughter all cattle, etc., brought to them.
Ibid. § 3.

79. Said board of health of the city of Boston is hereby authorized to appoint one or more inspectors, to see that the rules and

Boston board of health to appoint inspectors.

1876, c. 144, § 4. regulations for the conduct of the business of the association for the time being are fully obeyed by said association and their tenants, and also to see that none but healthy animals are slaughtered; the salary or salaries of said inspector or inspectors to be established by the city council of said city of Boston. The said inspector or inspectors shall at all times have access to the premises of said association, and any building thereon, and also to the premises, yards or cars of any railroad company within the city of Boston for the purposes of examination, inspection and seizure of any meat or animals unfit for human food.

To prevent slaughter of animals unfit for food.
Ibid. § 5.

80. Said board of health of the city of Boston is hereby authorized to make whatever regulations may seem to them fit in order to prevent the slaughter and sale of animals unfit for human food.

INSPECTION OF PROVISIONS.

Inspectors of provisions, and animals intended for slaughter, may be appointed.
1876, c. 180, § 1.

81. The mayor and aldermen of cities, and the selectmen of towns may annually appoint one or more persons to be inspectors of provisions and animals intended for slaughter, who shall be sworn to faithfully discharge the duties of their office, and who shall receive such compensation as the city council of cities or the selectmen of towns shall determine.

To inspect provisions, etc., and if found unwholesome to cause the same to be destroyed.
Ibid. § 2.

82. Said inspectors shall have power to inspect all animals intended for slaughter, and all meats, fish, vegetables, produce, fruits and provisions of all kinds found in said cities or towns, or exposed for sale or kept with intent to sell therein; and may for this purpose enter into all buildings or inclosures where said animals, meats, fish, vegetables, produce, fruits or provisions are kept, stored or exposed for slaughter or sale. When such animals, meat, fish, vegetables, produce, fruit or provisions are found on inspection to be tainted, diseased, corrupted, decayed or unwholesome from any cause, said inspectors shall seize the same and cause them or it to be destroyed or disposed of otherwise than for food: *provided*, however, that if the owner of the property seized shall at the time of the seizure notify said inspector, in writing, of his desire to appeal to the board of health, said inspector shall cause said animals, meat, fish, vegetables, produce, fruit or provisions to be inspected by said board of health, or by a committee thereof, con-

Proviso.

sisting of not less than two members, and if said board or committee shall find the same to be tainted, diseased, corrupted or unwholesome, they shall order the same to be destroyed or disposed of otherwise than for food; if said board or committee shall not so find, they shall order said animals, meat, fish, vegetables, produce, fruit or provisions to be forthwith returned to the owner thereof. All moneys received by said inspector or board of health for property disposed of as aforesaid, shall, after deducting all expenses incurred by reason of such seizure, be paid to the owner thereof.

83. Said inspectors shall have the power to inspect all veal found in said cities or towns, or offered or exposed for sale or kept with intent to sell therein; and if said veal is, in the judgment of the inspector, that of a calf killed under four weeks old, he shall seize the same and cause it to be destroyed or disposed of as provided in the preceding section, subject, however, to the same provisions concerning appeal and the disposal of moneys that are therein contained.

To destroy veal, if calf was less than four weeks old when killed. Ibid. § 3.

84. When complaint is made on oath to any police, municipal or district court or magistrate authorized to issue warrants in criminal cases, that the complainant believes that any diseased animals, or any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind or veal of any calf killed under four weeks old is kept or concealed in any particular house or place with the intent to kill, sell or offer the same for sale for food, the court or magistrate, if satisfied there is reasonable cause for such belief, shall issue a warrant to search for such animals or articles, and all such warrants shall be directed and executed as provided in the third section of chapter one hundred and seventy of the General Statutes. If, upon hearing, said court or magistrate shall determine that said animals or articles or any of them were kept or concealed for the purposes aforesaid, the same shall be destroyed or disposed of by the inspector, or by any officer designated by the court or magistrate, according to the provisions of the second section of this act; if the court or magistrate shall not so determine, said animals or articles shall be returned to the owner.

Warrant may be issued for search for unwholesome meat, etc. Ibid. § 4.

Penalty for

85. Whoever knowingly sells, or offers or exposes for sale, or

selling, etc.,
unwholesome
food.

1876, c. 180, § 5.

Name and place
of business of
person con-
victed to be
published.
Ibid. § 6.

Act subject to
acceptance.
Ibid. § 7.

Selling corrupt
or unwholesome
provisions with-
out notice.
G. S. c. 166, § 1.
12 Cush. 499.

Young calves
not to be killed
for sale, or sold.
1866, c. 253, § 1.
97 Mass. 567.

Search warrant
for such meat
may be issued.
Ibid. § 2.

has in his possession with intent to sell for food, any diseased animal, or any tainted, diseased, corrupted, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind whatever, shall be punished by imprisonment in jail not exceeding sixty days, or by fine not exceeding one hundred dollars.

86. The place where property condemned under this act shall be found, and the name of every person in whose possession it may be found and condemned, or who shall be convicted of an offence under section five of this act [§ 85 of this digest], shall be published in two newspapers published in the county.

87. The foregoing section of this act shall not be in force in any city or town unless this act shall be adopted by the city council of such city, or by the inhabitants of such town.¹

88. Whoever knowingly sells any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding two hundred dollars.

89. Whoever kills or causes to be killed, for the purpose of sale, any calf less than four weeks old; or knowingly sells, or has in his possession with intent to sell, the meat of any calf killed when less than four weeks old, — shall be punished by imprisonment in the jail or house of correction not exceeding six months; or by fine not exceeding two hundred dollars; or by both such imprisonment and fine; and all such meat exposed for sale, or kept with intent to make sale thereof, may be seized and destroyed by any board of health, or health officer, or by any sheriff, deputy sheriff, constable, or police officer.²

90. When complaint is made on oath to any police court or magistrate authorized to issue warrants in criminal cases, that the complainant believes that any meat such as is described in the first section is kept or concealed in any particular house or place, with the intent to sell or offer the same for sale, the court or magistrate, if satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such meat; and all such warrants shall be directed and executed in the manner provided in the third section

¹ Accepted by the city council of Boston, June 2, 1876.

² See also "Faneuil-hall market," *ante*, p. 276, § 12.

of the one hundred and seventieth chapter of the General Statutes. 1866, v. 253, § 2.

91. Whoever fraudulently adulterates, for the purpose of sale, bread or any other substance intended for food, with any substance injurious to health, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding three hundred dollars; and the articles so adulterated shall be forfeited and destroyed under the direction of the court. Adulterating food. G. S. c. 166, § 3.

92. Whoever adulterates, for the purpose of sale, any liquor used or intended for drink, with *cocculus indicus*, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, Brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health; and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison not exceeding three years; and the articles so adulterated shall be forfeited. Adulteration of liquor used for drink, with *cocculus indicus*, etc. Ibid. § 4.

93. Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine, or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars; and such adulterated drugs and medicines shall be forfeited and destroyed under the direction of the court. Adulteration of drugs and medicines. Ibid. § 5.

94. Whoever wilfully or maliciously defiles, corrupts or makes impure any spring or other source of water or reservoir, or destroys or injures any pipe, conductor of water, or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the jail not exceeding one year. Wilfully corrupting springs, etc., or injuring aqueduct. Ibid. § 6. See Water, post. p. 894.

95. If an apothecary or other person sells any arsenic, strychnine, corrosive sublimate or prussic acid without the written prescription of a physician, he shall keep a record of the date of such sale, the article, the amount thereof sold, and the person or persons to whom delivered; and for each neglect he shall forfeit a sum not exceeding fifty dollars. Whoever purchases deadly poisons, as aforesaid, and gives a false or fictitious name to the apothecary or other person, shall be punished by fine not exceeding fifty dollars. Persons selling arsenic, etc., to keep record, etc. Purchasers who give false name, etc. Ibid. § 7.

Damaged fish
not to be sold or
exported, etc.
Penalty.
G. S. c. 49, § 57.

96. Whoever sells within this state, or exports therefrom tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, shall forfeit the sum of ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity; and upon a trial in such case the burden of proof shall be upon the defendant to show for what purpose such fish was so exported or sold.

UNDERTAKERS.

Undertakers to
be licensed by
board of health.
1872, c. 275, § 1.

97. The boards of health of towns and the mayor and aldermen of cities shall, on or before the first day of July next [1872], and each year thereafter, license a suitable number of undertakers to take charge of the obsequies or funeral rites preliminary to the interment of a human body, if, in the judgment of such boards, a sufficient number are not already licensed in their respective places.

To make the
returns required
by G. S. c. 21.

Any undertaker having such charge shall forthwith obtain and return to the clerk of the city or town in which the deceased resided or the death occurred, the facts required by chapter twenty-one of the General Statutes, to be recorded by said officer concerning the deceased; the clerk shall thereupon give to the undertaker a certificate as provided for in section four of said chapter, which certificate the undertaker shall deliver to the person having charge of the interment in accordance with the provisions of said fourth section. Any undertaker violating any of the provisions of this act shall be punished by a fine of twenty dollars for each violation of the duties herein prescribed, to be imposed by any court of competent jurisdiction.

To receive cer-
tificate from
clerk and deliv-
er it to person
having charge
of burial.
Penalty.

Sextons not ex-
empted from G.
S. c. 21, § 4, when
undertaker is
not in charge of
obsequies.
Ibid. § 2.

98. Nothing herein contained shall exempt any sexton or other person named in the fourth section of the twenty-first chapter of the General Statutes, from the provisions and penalties prescribed in said section in cases where an undertaker appointed as provided in this act is not employed in charge of the obsequies.

DEAD BODIES.

Overseers of
poor, etc., to
give dead bodies
to physicians in
certain cases.

99. The overseers of the poor of a town, the mayor and aldermen of a city, and the inspectors and superintendent of a state almshouse, may, to any physician or surgeon, upon his request,

give permission to take the bodies of such persons dying in such town, city or almshouse, as are required to be buried at the public expense, to be by him used within the state, for the advancement of anatomical science; preference being given to medical schools established by law, for their use in the instruction of students.¹

100. Every physician or surgeon, before receiving any such dead body, shall give to the board of officers surrendering the same to him, a sufficient bond that each body shall be used only for the promotion of anatomical science within this state, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried.

Physicians, etc.,
to give bond on
receiving a dead
body.
Ibid. § 2.

101. Persons having charge of a poor-house, workhouse, or house of industry, in which a person required to be buried at the public expense dies, shall forthwith give notice of such death to the overseers of the poor of the town, or to the mayor and aldermen of the city in which such death occurs; and except in case of necessity, the body of such person shall not be buried until such notice is given, and permission therefor granted by such overseers or mayor and aldermen; nor without their permission shall the body be surrendered for dissection or mutilation.

Persons having
charge of poor-
houses, etc., to
give notice of
death.
Ibid. § 3.

102. If the deceased person during his last sickness, of his own accord requested to be buried, or if, within twenty-four hours after his death, any person claiming to be and satisfying the proper authorities that he is a friend or of kindred to the deceased, asks to have the body buried, or if such deceased person was a stranger or traveller who suddenly died, the body shall not be so surrendered, but shall be buried.

When dead bod-
ies are not to be
given to physi-
cians, etc.
Ibid. § 4.

103. Whoever, not being authorized by the board of health, overseers of the poor, directors of a workhouse, selectmen, or mayor and aldermen of any city or town, by the board of directors for public institutions, or overseers of the poor of the city of Boston, wilfully digs up, disinters, removes, or conveys away, any human body or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, and whoever is accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison not exceeding one year, in the

Violation of
sepulture, pen-
alty for.
G. S. c. 165, § 37.
10 Pick. 37.
19 Pick. 304.

¹See order of mayor and aldermen, passed November 3, 1869. City Records, vol. 47, page 1287.

G. S. c. 165, § 27. jail not exceeding two years, or by fine not exceeding two thousand dollars.

Buying or having dead body for the purpose of sale, etc., penalty for. Ibid. § 38. 104. Whoever buys, sells, or has in his possession for the purpose of buying or selling, or trafficking in, the dead body of any human being, shall be punished by fine of not less than fifty nor exceeding five hundred dollars, or by imprisonment in the jail not less than three months, nor exceeding three years.

CEMETERIES AND BURIALS.¹

Boards of health to make regulations, etc. G. S. c. 28, § 6. 8 Cush. 68. 13 Allen, 546. 105. Boards of health may make all regulations which they judge necessary concerning burial-grounds and interments within their respective limits; may prohibit the use of tombs by undertakers (as places of deposit for bodies committed to them for burial), for the purpose of speculation, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

To give notice of regulations. Ibid. § 7. 106. Notice of such regulations shall be given by publishing the same in some newspaper of the town or city, or if there is no such newspaper, by posting a copy in some public place therein, which shall be deemed legal notice to all persons.

Notice to be given before closing tombs, etc., by order of board. Ibid. § 8. 107. Before a tomb, burial-ground, or cemetery is closed by order of the board of health for a time longer than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if so many there are of the proprietors of such burial-ground or cemetery, and notice shall also be published two successive weeks at least preceding such hearing, in two newspapers, if so many there are published in the county.

Appeal from order of board. Ibid. § 9. 108. The owner of a tomb aggrieved by the order of the board of health closing any tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the

¹ For other provisions in relation to cemeteries and burials, see "Cemeteries," p. 181.

board shall remain in force until a decision shall be had on the appeal. G. S. c. 28, § 9.

109. Appeals shall be tried in regular course before a jury, and if the jury find that the tomb, burial-ground, or cemetery so closed was not a nuisance, nor injurious to the public health at the time of the order, the court shall rescind the same so far as it affects such tomb, burial-ground, or cemetery, and execution for costs of the appeal shall issue in favor of the appellant against the town or city in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the town or city. To be tried by a jury. Costs. Ibid. § 10.

110. For every interment in violation of section seventy-seven in a town or city in which the notice prescribed in section seventy-nine has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars. Penalty for violation of this chapter. Ibid. § 11.

NUISANCE CAUSED BY WET LANDS.¹

111. By an act passed April 29, 1868, the provisions of chapter twenty-six of the General Statutes, relating to the preservation of the public health, were extended as follows: When any lands in any city or town are wet, rotten, or spongy, or covered with stagnant water, so as to be offensive to persons residing in the vicinity thereof, or injurious to health, the same shall be deemed to be a nuisance, and the board of health or health officer of such city or town may, upon petition and hearing, abate such nuisance in the manner provided in the following sections. Wet lands to be redeemed. 1868, c. 160, § 1.

112. Any one or more persons claiming to be injuriously affected by such nuisance may, by petition, describing the premises upon When a nuisance, how abated.

¹ See chap. 308, 1867, authorizing the city to purchase or otherwise take the lands, with the buildings and other fixtures thereon, situated and lying within the *Church-street District*, so called, for the purpose of abating a nuisance and preserving the public health; also, chap. 277, 1868, authorizing the taking of lands within the *Suffolk-street District*, so called, for the same purpose. For the action of the city council under the same, see City Doc. 41, 1868; and, also, the opinion of the supreme judicial court in the case of *John T. Dingley vs. City of Boston*, printed in City Doc. 34, 1869. For act authorizing the city to raise the grade of the *Northampton-street District*, so called, see St. 1865, c. 340.

1863, c. 160, § 2. which such nuisance is claimed to exist, and setting out the nature of the nuisance complained of, apply to the board of health or health officer for its abatement; whereupon such board of health, or health officer, shall proceed to view the premises and examine into the nature and cause of such nuisance.

Hearing may be
had.
Ibid. § 3.

113. If upon such examination the board of health or health officer shall be of opinion that the prayer of the petition or any part thereof should be granted, he or they shall appoint a time and place for a hearing upon the petition, and before the time so appointed shall cause reasonable notice of the time and place to be given to the petitioners, the persons whose lands it may be necessary to enter upon to abate the nuisance, and any other persons who may be affected by the proceedings, and, except in those cities and towns in which the mayor and aldermen and selectmen constitute the board of health, to the mayor and the chairman of the selectmen, that they may be heard upon the necessity and mode of abating such nuisance, and the questions of damages, and of the assessment and apportionment of the expenses thereof.

Notice of, how
served.
Ibid. § 4.

114. Such notice shall be in writing, and may be served by any person competent to serve civil process, upon the mayor and chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter, or which may be benefited thereby, or his authorized agent, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the lands are unoccupied, and the owner or agent is unknown, or without the state, the notice to such owner may be served by posting an attested copy.

Expenses and
damages, how
assessed.
Ibid. § 5.

115. At the time and place appointed for the hearing, the board of health or health officer shall hear the parties, and after such hearing may cause such nuisance to be abated, according to his or their discretion; and for that purpose may enter and make such excavations, embankments and drains upon any lands, and under and across any streets and ways as may be necessary for such abatement. They shall also determine in what manner and at whose expense the improvements made shall be kept in repair, and shall estimate and award the amount of damage sustained by and benefit accruing to any person by reason of such improvements, and what proportion of the expense of making and keeping

the same in repair shall be borne by the city or town and by any person benefited thereby. The damages so awarded shall be paid by the city or town, and there shall be assessed to the several persons benefited by such improvements, his proportionate part, to be ascertained as before provided, of the expense of making and keeping in repair such improvements, and the same shall be included in the next city or town taxes of such persons, and shall be a lien upon the real estate benefited thereby, and be collected in the same manner as other taxes upon real estate, and shall be liable to abatement as other taxes now are. 1868, c. 160, § 5.

116. The boards of health and health officer shall, within thirty days after the abatement of any nuisance in the manner hereinbefore provided, make return to the city or town clerk of their doings in the premises, which return shall be by him recorded in the city or town books. Record to be made.
Ibid. § 6.

117. If the board of health or health officer shall unreasonably refuse or neglect to proceed in the matter of said petition, the petitioner may apply by petition to the superior court, or any justice thereof, who, upon a hearing and good cause shown, may appoint three commissioners, who shall proceed in the manner hereinbefore provided. Proceedings, if board of health will not act.
Ibid. § 7.

118. Any person aggrieved by the decision of the board of health, health officer, or commissioners, in their estimate and award of damages, may make complaint to the county commissioners for the county, at any time within one year after return to the city or town clerk, whereupon the same proceedings shall be had as are now provided by law in cases where persons or parties are aggrieved by the award of damages by selectmen for land taken for a town way. Appeal, how made.
Ibid. § 8.

ORDINANCES.¹

SECTION 1. It shall be the duty of the mayor to be vigilant and active in protecting the public health; Duty of mayor.
Dec. 2, 1872.

¹ An ordinance relating to the public health, passed Dec. 2, 1872. Published in *Boston Post*, Dec. 6, 13, in *Daily Globe*, and *Daily Advertiser*, Dec. 7, 14. An ordinance to amend an ordinance relating to the public health, passed January 10, 1873. An ordinance to amend an ordinance relating to the public health, passed March 7, 1873. An ordinance to amend an ordinance relating to the public health, passed October 13, 1873.

Dec. 2, 1872.

to see that the laws and ordinances in relation to the same are enforced; to communicate his views to the board of health or the city council from time to time, as he may deem expedient; and he shall have power to call upon the police and the various city officers to aid him in the performance of these duties.

COMMITTEE ON HEALTH.

Health committee,
duties of.
Ibid.

SECT. 2. There shall be appointed annually, in the month of January, a joint committee of the city council on the health department, consisting of two aldermen and three councilmen. It shall be the duty of said committee to examine, as often as once in each month, the records and accounts of the board of health, and also to examine all applications for appropriations for the health department, and report thereon to the city council.

To have control
of city stables,
teams, etc.
Ibid.

SECT. 3. The said committee shall have control of all the expenditures on account of the city teams, the city stables, the cleaning of cesspools and streets, the collection of ashes and offal, and the employment of the laborers required therefor: *provided*, however, that the expenditures for the purposes herein enumerated shall not exceed the amount previously appropriated therefor by the city council: and *provided further*, that the work of cleaning the cesspools and streets, and collecting the ashes and offal, and all contracts therefor, shall be performed in a manner entirely satisfactory to the board of health; and all contracts for such work shall contain the condition that they shall be performed to the satisfaction of the board of health.

SECT. 4. The said committee shall annually, on or before the 15th of February, make an estimate of the appropriations required during the ensuing financial year for and on account of the city teams, city stables, cleaning the cesspools and streets, collecting offal and ashes, and paying the laborers employed in connection therewith; and shall add the amount so estimated to the amount estimated by the board of health, as provided in section eight of this ordinance, and transmit the same to the auditor.

To furnish estimates for appropriations.
Dec. 2, 1872.

BOARD OF HEALTH.

SECT. 5. In the month of November, in the year 1872, or as soon thereafter as may be, the mayor shall appoint, subject to the approval and confirmation of the city council, three persons, not members of the city council, who shall constitute the board of health of the city of Boston. The persons so appointed shall enter upon the duties of their office forthwith. The terms of office shall be so arranged at the time of their appointment that the term of one shall expire on the first Monday in May in each year after the year 1873, and the vacancy so created, as well as all vacancies occurring otherwise, shall be filled by the mayor, with the approval of the city council. The members of said board shall at all times be subject to removal by the mayor for cause. For their services they shall receive such compensation as the city council may from time to time determine.

Board of health, appointment and duties.
Dec. 2, 1872.
Jan. 10, 1873.

SECT. 6. The said board shall organize annually by the choice of one of their members as chairman.

To organize annually.
Dec. 2, 1872.

Dec. 2, 1872.

They shall also choose a clerk, who shall not be a member of the board; and they may make such rules and regulations for their own government, and for the government of all subordinate officers in their department, as they may deem expedient.

Powers and
duties.

Ibid.

116 Mass. 254.

SECT. 7. The board of health, as hereby constituted, shall have and exercise all the powers vested in, and shall perform all the duties prescribed to, the city council or the board of aldermen as a board of health, under the statutes and ordinances now in force; and shall have power to appoint such subordinate officers, agents and assistants, in addition to those hereinafter designated, as they may deem necessary; and may fix their compensation, and the compensation of the clerk before mentioned: *provided*, that the whole amount of such compensation shall not exceed the sum appropriated therefor by the city council.

To furnish estimates for appropriations.
Ibid.

SECT. 8. The said board shall annually, on or before the 15th day of February, send to the standing committee of the city council on the health department, an estimate, in detail, of the appropriations required by the health department (except for the purposes named in section three of this ordinance) during the next financial year. All bills for expenditures from the appropriations for the health department, except those specially mentioned in this ordinance as being under the control of the standing committee of the city council, shall be drawn for by the chairman of said board, examined by the auditor,

and approved by the committee on accounts, before Dec. 2, 1872.
they are paid by the treasurer.

SECT. 9. The said board of health shall annually, Annual report.
May or June.
in the month of May or June, present to the city Ibid.
council a report, made up to and including the thirtieth day of the preceding April, containing a full and comprehensive statement of the acts of the board during the year, and a review of the sanitary condition of the city; and they shall at the same time transmit to the city council reports from the superintendent of health, city physician and the port physician, covering the same period.

SUPERINTENDENT OF HEALTH.

SECT. 10. The said board shall annually, in the Superintendent
of health,
duties, etc.
Ibid.
month of April, and whenever a vacancy occurs from any cause, appoint, subject to the approval of the mayor, an officer who shall be known as the superintendent of the health department. Said superintendent shall hold his office for one year from the first Monday in May in the year in which he is appointed, and until a successor is appointed or he is removed, and he may be removed at the pleasure of said board. He shall perform such duties in addition to those hereinafter designated, keep such records, and make such reports, as the said board may from time to time direct. For his services he shall receive such compensation as the city council may from time to time determine.

SECT. 11. The said superintendent of health shall, To have care of
teams and
stables.
under the direction of the standing committee of the

Dec. 2, 1872.

city council on the health department, have the care and superintendence of the city teams and city stables; and he shall make all necessary arrangements for cleaning the streets, disposing of manure, and removing house dirt and house offal, to the entire satisfaction of the board of health. He shall furnish, upon the requisition of the superintendent of streets, carts and horses for use in the paving department; and the expense of complying with such requisitions shall be charged to the appropriation for the paving department. Said superintendent shall perform such other duties, and have such other powers, as agent of the board of health, in executing the laws, ordinances, orders or regulations relating to the subject of health, as the said board may from time to time prescribe.

To give bonds.
Ibid.

SECT. 12. The said superintendent of the health department shall give bond with one or more sureties, to the approbation of the city council, with condition that he shall faithfully perform all the duties of his office, and account for all moneys entrusted to him; and that he will not, directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement made in pursuance of this ordinance.

Bills for work
done, and ac-
counts.
Ibid.

SECT. 13. Whenever the joint standing committee on the health department, or the board of health, or the superintendent, sells any articles or materials belonging to the city, or does, or causes to be done,

work for any individual, the clerk of the board of health shall enter in books to be kept for that purpose all such sales and work done, with the price thereof, and shall forthwith make out bills for the same and deliver them to the city collector for collection, and the said collector shall forthwith demand payment of the said bills; and in case any bills or dues under this ordinance remain unpaid at the expiration of thirty days after demand for payment as aforesaid, the said collector shall deliver the same to the city solicitor for legal proceedings; but if the mayor is satisfied that the interests of the city require it, he may cause legal proceedings to be had at any time.

SECT. 14. The pay-rolls of the laborers employed under the direction of the joint standing committee on the health department shall be made up and certified by the superintendent of health, and upon being duly allowed and audited, shall be paid by the city treasurer, at such times and places as he may appoint, and he may employ a clerk for that purpose.

Pay-rolls of
laborers,
Ibid.

CITY PHYSICIAN.

SECT. 15. The said board of health shall annually, in the month of April, appoint, subject to the approval of the mayor, a suitable person for city physician, who shall hold his office for one year from the first Monday in May, in the year in which he is appointed, unless sooner removed; and he may be removed at the pleasure of the board, and a vacancy may be filled at any time for the unexpired term. He shall

City physician,
how chosen, etc.
Ibid.

Dec. 2, 1872.

perform such duties, in addition to those hereinafter designated, keep such records, and make such reports, as the board of health may from time to time direct. For his services he shall receive such compensation as the city council may from time to time determine.

Assistants.

Said board may also appoint such assistants to the city physician as they may from time to time deem necessary.

To examine
vessels at
wharves, etc.
Ibid.

SECT. 16. The city physician, when notified thereof, shall examine into all nuisances, sources of filth, and causes of sickness which may be on board of any vessel at any wharf within the harbor of Boston, or which may have been landed from any vessel on any wharf, or other place; and, under the direction of the board of health, shall cause the same to be removed or destroyed.

Vaccination of
persons.
Ibid.

SECT. 17. The city physician shall vaccinate, and re-vaccinate, without charge, any inhabitant of Boston who may apply for that purpose; he shall also give certificates of vaccination to such children as have been vaccinated, and require such certificates for admission to the public schools: *provided*, that no person shall be entitled to the benefits of this section who shall wilfully neglect, or refuse, to return to the office of the city physician, when requested by him, for the purpose of enabling him to ascertain the effect of the vaccination, or to renew the necessary supply of virus for the use of said office.

SECT. 18. He shall always have on hand, as far as is practicable, a sufficient quantity of vaccine virus, and he shall supply the physicians of the city institutions, and the dispensary, with the same, without expense to them.

To keep virus
on hand.
Dec. 2, 1872.

SECT. 19. He shall examine all causes of disease within the city, and inquire into all sources of danger to the public health, whenever called upon by the mayor or the board of health for the time being, and shall give his professional services and advice therein at all times when required.

To report all
causes of
danger, etc.
Ibid.

SECT. 20. The city physician shall attend upon all cases of disease, and perform all the professional services that may be required in the jail, city prison under the court-house, in the city temporary home, and in the several police stations in the city, except those at East and South Boston. He shall, when requested by the mayor, board of aldermen, or chief of police, examine all candidates for appointment on the police force; examine the condition of all officers absent from duty on account of disability; also all cases of accidental injury whereby the city may become liable; and shall report to the city registrar, when requested by him, the causes of death of all persons dying with no physician in attendance.

To attend jail
and police
stations.
Ibid.

SECT. 21. Whenever any vessel arrives in the harbor of Boston, between the first day of April and the fifteenth day of November in any year, having on board any hides, hide cuttings, skins, rags, or fruit,

Vessels with
hides, rags, etc.,
to be reported.
Ibid.

Dec. 2, 1872.

the harbor police shall give immediate notice thereof to the city physician.

Masters of
vessels to notify
harbor master.
Ibid.

SECT. 22. Every master and consignee of any vessel, arriving within the time fixed in the preceding section, and containing the articles therein named, or any of them, shall give immediate notice of the arrival of such vessel to the harbor master or the city physician.

QUARANTINE.

Quarantine
grounds.
Ibid.

SECT. 23. The quarantine grounds of the city of Boston shall consist of Deer Island and Gallop's Island, in Boston harbor; and said islands are hereby made and declared to be the places of quarantine for the port of Boston.

PORT PHYSICIAN.

Port physician,
appointment
and duties.
Ibid.

SECT. 24. The said board of health shall annually, in the month of April, appoint, subject to the approval of the mayor, a suitable person for port physician, who shall hold his office for one year from the first Monday in May, in the year in which he is appointed, unless sooner removed; and he may be removed at the pleasure of the board, and a vacancy may be filled at any time for the unexpired term. He shall perform such duties in addition to those hereinafter designated, keep such records, and make such reports, as the board of health may from time to time direct. For his services he shall receive such compensation as the city council may from time to time determine.

SECT. 25. The port physician shall reside at Deer island. He shall be superintendent and physician of the quarantine establishment at Deer island, and either physician, or assistant physician, as the board of directors for public institutions may elect, of all the city establishments, which are, or may be, located upon said island. He shall perform all such services as may be required of him by the mayor, or the board of health, in relation to quarantine.

Shall reside at
Deer island.
March 7, 1873

SECT. 26. The port physician may, at any time, with the concurrence of the board of health, appoint an assistant port physician, to hold his office so long as the board of health shall determine; and such port physician shall receive such compensation for his services as may be appropriated therefor by the city council.

Assistant port
physician.
Dec. 2, 1872.

INTERMENT OF THE DEAD.¹

SECT. 27. The interment of the dead shall be under the superintendence of the board of health, who shall carry into execution all laws, ordinances, regulations and orders, relating to the interment of the dead.

Interment of
the dead.
Ibid.
5 Cush. 408.

SECT. 28. The board of health shall have the care and custody of all the burying-grounds in the city, and shall keep the same in good repair and secured from trespassers, and prevent any and all nuisances therein.

Care of burial-
grounds.
Ibid.

¹ The ordinances and by-laws of the city of Boston concerning burying-grounds and the burying of the dead are regulations relating to health within St. 1849, c. 211, § 7 (Gen Sts. c. 26, § 50). 5 Cush. 408.

Permits for
burial.
Dec. 2, 1872.

SECT. 29. The board of health may give licenses for burials, and for the removal of dead bodies from the city, and point out the place, depth, width, and range of all graves in the several burying-grounds, and shall forbid graves to be dug within those limits in such grounds in which, in its judgment, it would be dangerous to the public health to allow graves.

Persons not to
bury without
permit.
Ibid.

SECT. 30. No person shall bury or inter, or cause to be buried or interred, any dead body, in violation of any direction or order of the said board, given in accordance with the preceding section, or without having first obtained a license so to do.

Depth of
graves.
Ibid.

SECT. 31. No person shall inter, or cause to be interred, any dead body in a grave less than three feet deep from the surface of the ground surrounding the grave to the top of the coffin.

Undertakers.
Ibid.
16 Pick. 121.
13 Allen, 546.
See St. 1872, c.
275, *ante*, § 97.
p. 398.

SECT. 32. On the first Monday of February, annually, or within sixty days thereafter, the mayor, by and with the advice and consent of the aldermen, shall appoint, for a period of one year from the first Monday of April in the year in which they may be appointed, such a number of funeral undertakers as he may deem expedient, and they shall be responsible for the decent, orderly, and faithful management of the funerals undertaken by them, and for a strict compliance with the ordinances of the city in this behalf. Each undertaker may employ porters, of a discreet and sober character, to assist him, and he shall be accountable for their conduct; said under-

Porters.

takers and porters may be removed at the pleasure of the mayor. No person not appointed as aforesaid shall open any tomb or grave for the purpose of depositing or removing a dead body, without the permission of the board of health. Dec. 2, 1872.

SECT. 33. No person shall bury or inter, or cause to be buried or interred, any dead body at any other time of the day than between sunrising and sunsetting, except when otherwise permitted by the board of health. No bell shall be tolled in the city of Boston, at any funeral, without a special permit therefor from the mayor, or board of health, who are hereby authorized to suspend the usual ringing of any bell, when the illness of any person in the neighborhood thereof may require such suspension. The corpse of every person of ten years of age and upward shall be conveyed to the grave or tomb in a funeral car, drawn by not more than two horses, unless permission for a different mode of conveyance is given by the board of health. Burials to be by day. Bell-ringing. Ibid.

SECT. 34. No grave shall be opened or dug in any of the burying-grounds in the city, unless by permission of the board of health. Graves in city not to be dug. Ibid.

SECT. 35. No conductor on any railroad, no master of any steamboat or other vessel, no hack-driver, or other person, shall remove, or cause to be removed, from the city, any dead body, without the written license of the board of health.¹ Bodies not to be transported. Ibid.

¹ No person sick or infected with small-pox, nor the body of any person who has died of small-pox or other contagious disease, shall be conveyed in any public hack. See "Carriages," p. 168, § 24.

Bodies not to be removed.

Dec. 2, 1872.

10 Pick. 36.

19 Pick. 304.

SECT. 36. No person shall remove any dead body, or the remains of any such body, from any of the graves or tombs in this city, or shall disturb any dead body in any tomb or grave, without the license of the board of health.

Tombs not to be opened from

June to October.

Ibid.

SECT. 37. No grave or tomb shall be opened from the first day of June to the first day of October, except for the purpose of interring the dead, without the special permission of the board of health.

Undertakers' fees.

Ibid.

SECT. 38. For services rendered in accordance with the provisions of this ordinance, undertakers shall be entitled to receive the following fees, and no more, to wit: For digging a grave eight feet deep and covering the same, three dollars and fifty cents; for digging a grave six feet six inches deep, two dollars; for digging a grave five feet deep, one dollar and seventy-five cents; for digging a grave four feet deep, one dollar and fifty cents; for digging a grave three feet six inches deep, one dollar and twenty-five cents; and when the ground is frozen, the charge for digging graves may be augmented at the discretion of the city registrar. For opening and closing a tomb, one dollar and fifty cents; for placing a corpse in a coffin, when requested, and removing the same downstairs, one dollar and fifty cents; for carrying a corpse to the tomb or grave, including the assistance of funeral porters and one horse, five dollars; for carrying a corpse to the tomb or grave, including the assistance of funeral porters and two horses, seven dollars and fifty cents; for carrying a corpse out of

the city, there shall be allowed fifty cents in addition Dec. 2, 1872. for each mile beyond the limits of the city. When a corpse is carried into church for a funeral service, the undertaker may make an additional charge of two dollars. For lighting a cemetery, one dollar. For the burial of children under ten years of age, the fees shall be as follows: for services at the house, one dollar; for carrying the corpse to the carriage, and from the carriage to the place of deposit, and interring the same, one dollar; for the use of a pall, twenty-five cents.

The fees for disinterring and removing bodies from graves or tombs shall be in accordance with the amount and nature of the services rendered.

SECT. 39. The board of health are authorized to Regulations for interment. make and adopt any regulations in relation to the in- Ibid. terment of the dead which they may deem expedient, not inconsistent with the foregoing provisions, and subject to the approval of the mayor.

VAULTS AND DRAINS.

SECT. 40. The owner, agent, occupant, or other Dwelling-houses to have vaults or drains. person having the care of any tenement used as a Ibid. dwelling-house, or of any other building with which there is a privy connected and used, shall furnish the same with a sufficient drain under ground to carry off the waste water, and also with a suitable privy, the vault of which shall be sunk under ground and built in a manner hereinafter prescribed, and of a capacity proportionate to the number of inhabitants of such

Dec. 2, 1872.

tenement, or of those having occasion to use such privy. Any such owner, agent, occupant, or other person who shall neglect to comply with the provisions of this section shall be liable to a penalty of not less than five dollars nor more than twenty dollars, for each and every week during which such offence shall continue.

Size and location of vaults.
Ibid.

SECT. 41. All vaults and privies shall be made of brick and cement, and contain at least eighty cubic feet, and the inside of the same shall be at least two feet distant from the line of every adjoining lot, unless the owner of said adjoining lot may otherwise agree and consent; and at the same distance from every street, lane, alley, court, square, or public place, or public or private passage-way; and they shall be so constructed as to be conveniently approached, opened and cleaned. Every vault shall be made tight, so that the contents thereof cannot escape therefrom except as is provided in section forty-four. All preparations for cleaning a vault or privy shall be made by the person entering the same; and, in case of neglect to make such preparation, it shall be made by the city, and the expense thereof be charged to such person.

Vaults may be drained into sewers.
Ibid.

SECT. 42. The superintendent of sewers, under the direction of the board of health, is authorized to permit, under such restrictions, and on the payment of such sum, not exceeding thirty dollars, as they may deem expedient, the construction of sufficient passage-ways or conduits under ground for the pur-

pose of conveying the contents of any vault into any common sewer or drain. Dec. 2, 1872.

SECT. 43. If the board of health shall at any time be satisfied that any tenement, used as a dwelling-house, or any such other building as is mentioned in the fortieth section, is not provided with a suitable privy, vault, and drain, or either of them, as aforesaid, they shall give notice in writing to the owner, agent, occupant, or other person having the care thereof; or in case neither, the owner, agent, or person having the care thereof is an inhabitant of the city, public notice in two newspapers printed in Boston, requiring such owner, agent, occupant or other person, within such time as they may appoint, to cause a proper and sufficient privy, vault and drain, or either of them, to be constructed for such tenement or other building; and in case of neglect or refusal to obey such notice the board of health shall cause such privy, vault, and drain to be made for such tenement or other building, at the expense of such owner, agent, occupant, or other person; and in case any such drain, vault, or privy is constructed as aforesaid, for the use of more than one house, then the owner, agent, occupant, or other person having the charge of each of such houses, shall be liable to pay a proportional part of such expense.

When dwellings are a nuisance. Ibid. See "Buildings," ante. p. 117.

SECT. 44. Whenever any vault, privy, or drain becomes offensive or obstructed, the same shall be cleansed and made free, and the owner, agent, occupant, or other person having charge of the land in

Obstructed vaults to be cleansed, etc. Ibid.

Dec. 2, 1872.

which any vault, privy, or drain is situated, the state or condition of which is in violation of the provisions of this ordinance, shall remove, cleanse, alter, amend, or repair the same within such reasonable time, after notice in writing to that effect given by the board of health or the superintendent of health, as shall be expressed in such notice. In case of neglect or refusal so to do, the superintendent of health may, with the advice and consent of the board of health, cause the same to be removed, altered, amended, or repaired, as he may deem expedient, at the expense of the owner, agent, occupant, or other person as aforesaid, and such owner, occupant, or other person shall also be liable to such penalties as are prescribed by law or ordinance.

Cesspools and vaults not to be emptied without permit.
Ibid.

SECT. 45. No cesspool, vault or privy shall be emptied without a permit from the superintendent of health; nor in any other mode, or at any other time, than he may direct and appoint, subject to such regulations as the board of health from time to time shall make on the subject, and always at the expense of the owner, agent, occupant, or other person having charge of the tenement in which such vault is situated.

Applications for cleansing, how made.
Ibid.

SECT. 46. Books, in which shall be entered all applications for opening and cleansing vaults, shall be kept in convenient places under the charge of the superintendent of health; such applications shall specify the number of loads, if less than the whole contents of the vault, to be removed; and they shall

receive attention in the several wards in the order in which they are made, so far as practicable. The joint standing committee of the city council on the health department shall from time to time determine the sum to be paid by persons making such applications. And in order to ascertain the proper sum to fix as a minimum price, for the removal of the contents of the vaults, as hereinbefore provided, the committee on health shall advertise for proposals for such service, for a term not exceeding three years; and shall report to the board of health a contract or contracts therefor for their approval.

SECT. 47. No vault shall be opened between the first day of June and the fifteenth day of September, in each year, unless the board of health shall be satisfied of the necessity of the same for the health or comfort of the inhabitants. In such case no more of the contents shall be taken away than said board shall deem to be absolutely necessary for present safety and relief, and such precautions shall be used relative to the prevention of any offensive effluvia, as said board may direct, the expense to be borne by the owner, agent, occupant, or other person having charge of the premises.

Vaults not to be
opened from
June to Sept.
Ibid.

SECT. 48. All waste water shall be conveyed through sufficient drains, under ground, to a common sewer, or to such reservoir, sunk under ground, as may be approved by the superintendent of sewers. And no person shall suffer any waste or stagnant water to remain in any cellar, or upon any lot, or vacant ground, by him owned or occupied.

Waste water.
Ibid.

Overcrowded
tenements.
Dec. 2, 1872.

See "Build-
ings," *ante*.
p. 115.

SECT. 49. Whenever, upon due examination, it appears to the board of health, that the number of persons occupying any tenement or building in the city is so great as to be the cause of nuisance and sickness, and the source of filth, or that any tenements or buildings are not furnished with vaults constructed according to the provisions of this ordinance, and sufficient privies and drains underground for waste water, they may, thereupon, issue their notice, in writing, to such persons, or any of them, requiring them to remove from and quit such tenement or building within such time as the said board shall deem reasonable. And if the person or persons so notified, or any of them, shall neglect or refuse to remove from and quit such tenement or building within the time mentioned in such notice, the board of health are hereby authorized and empowered, thereupon, forcibly to remove them, and such person or persons shall be liable to a penalty for such neglect or refusal, and for the expense of their removal.

HOUSE OFFAL, ASHES, ETC.

House offal,
ashes, etc.
Ibid.

SECT. 50. All house offal, whether consisting of animal or vegetable substances, shall be placed in suitable vessels, and no ashes or other refuse matter shall be mingled therewith; and the same shall be kept in some convenient place, to be taken away by the scavengers, which shall be done as often as twice in each week.

Ashes and offal
not to be mixed.
Ibid.

SECT. 51. Ashes kept for removal by the health department shall not be mixed with other substances,

but shall be kept separate and apart, in a convenient locality, in suitable iron or other metallic vessels, and in such a manner as to prevent the spread of fire. Dec. 2, 1872.

SECT. 52. No person shall remove, or carry in, or through, any of the streets, squares, courts, lanes, avenues, places, or alleys within the city of Boston any house dirt or house offal, either animal or vegetable; or any grease or bones, or any refuse substances from any of the dwelling-houses or other places in the city, unless each person so removing or carrying the same, and the mode in which the same may be removed or carried, shall have been expressly licensed by the board of health, upon such terms and conditions as they may deem the health and interest of the city require.¹ But all the ashes and cinders made from steam-engines, or steam-boilers, forges or furnaces, used for mechanical purposes, shall be removed at the expense of the parties occupying the building, or the owners thereof, and at such times and in such manner as the board of health may direct. House offal, how conveyed through city. Ibid. 6 Pick. 187.

SECT. 53. No person, without the license of the board of health, shall throw into, or leave in, or upon, any street, court, square, lane, alley, wharf, public square, public enclosure, vacant lot, or any pond or body of water within the limits of the city, any dead animal, dirt, sawdust, soot, ashes, cinders, shavings, hair, shreds, manure, oyster, clam or lobster shells, Rubbish not to be left in streets or docks. Ibid.

¹ A by-law of the city of Boston, prohibiting any person, not duly licensed therefor by the mayor and aldermen, from removing house dirt and offal from the city, was held not to be in restraint of trade, but to be a valid by-law, and binding upon a stranger coming into the city. 6 Pick. 187.

Dec. 2, 1872.

waste water, rubbish or filth of any kind, or any refuse animal or vegetable matter whatsoever. Nor shall any person throw into, or leave in, or upon, any dock, flats or tide water within the jurisdiction of the city, any dead animal or other foul or offensive matter, except as provided in the fifty-sixth section of this ordinance.

To be removed
by supt. of
health.
Ibid.

SECT. 54. If any of the substances mentioned in the preceding section shall be thrown or carried from any house, warehouse, shop, cellar, yard, or other place, or left in any of the places specified in the preceding section, the owner and occupant of such house, warehouse, shop, cellar, yard, or other place as aforesaid, and the person who actually threw, carried, or left the same, or who caused the same to be thrown, carried, or left, shall severally be held liable for such violation of this ordinance; and all such substances shall be removed from the place where they have been so thrown or left, as aforesaid, by such owner or occupant, or other person, within two hours after personal notice, in writing, to that effect, given by the superintendent of health; or such removal shall be made under the direction of said superintendent, and the expense thereof borne by such owner or occupant.

Penalty for
placing rubbish
in streets, etc.
Ibid.

SECT. 55. All dirt, sawdust, soot, ashes, cinders, shavings, hair, shreds, manure, oyster, clam, or lobster shells, waste water, or any animal or vegetable substance, rubbish or filth of any kind, in any house, warehouse, or other building, cellar, yard, unaccepted

street, alley-way, or other place which the board of health may deem injurious to the health of the city, shall be removed by the owner or occupant of such house, warehouse, other building, cellar, yard, unaccepted street, alley-way, or other place where the same may be found, within twenty-four hours, or such other time as the board of health may deem reasonable, after notice in writing to that effect, served personally upon the owner or occupant, or their authorized agent, by any person competent to serve a notice in a civil suit, or left at the owner's, occupant's or agent's last and usual place of abode, if the same be known and be within the state; or such removal shall be made under the direction of the board of health, and the expense thereof borne by such owner or occupant, who shall also be liable to a penalty. Dec. 2, 1872.

SECT. 56. No person shall bring into the city for sale, or shall sell, or offer for sale, any halibut, cod, haddock, or mackerel, until the same have been cleansed of their entrails and refuse parts; and such entrails and refuse parts shall be thrown overboard, below low-water mark; and shall never be kept beyond the flowing of the tide next after such fish are so cleansed; and until so thrown overboard they shall be kept, in a safe manner, on board the vessels or boats in which the fish were brought. And no person shall sell or deliver, from any stall, fish-box, cart, or other place, any fish of any kind except flounders, smelts, and other small fish, salmon and shad, until the same have been cleansed of their entrails and refuse parts; and such entrails and refuse

Fish to be
cleaned, etc.
Ibid.

Dec. 2, 1872.

parts shall be kept in some tight vessel, and shall be thrown into the sea below low-water mark within twenty-four hours after the fish are so cleansed. And no person shall sell, or offer for sale, in the city, fish of any kind, unless the same be kept in covered stalls, fish-boxes, or other houses, or covered carts, which shall always be kept clean and in good order, and well secured from the rays of the sun.

Shell-fish.
Ibid.

SECT. 57. No person shall sell or offer for sale, in any street, lane, or alley, any fish, lobsters, oysters, or shell-fish of any kind, except by permission of the board of health, and on such conditions as they shall order.

Vegetables.
Ibid.

SECT. 58. No person shall bring into the city, or have in his possession for sale, or sell, or offer for sale, any vegetables whatever (excepting green peas and beans in the pods, and green corn in the inner husks), which have not previously been divested of such parts or appendages as are not commonly used for food; and no person shall have such parts or appendages in his possession in any public or private market, or in any store, shop or other place, or in any cart or vehicle in said city used or occupied for the sale of vegetables or articles of food.¹

Fowls, swine.
Ibid.

SECT. 59. No fowls, swine or goats shall be kept within the limits of the city without the license of the board of health, and only in such place and manner as they may direct.

¹ An ordinance passed July 23, 1872, prohibiting the sale of beets, turnips, cabbages, etc., unless previously divested of their tops and outer leaves, appears to have been repealed by the passage of this ordinance.

SECT. 60. The owners and occupants of livery and other stables within the city shall not wash or clean their carriages or horses, or cause them to be washed or cleaned, in the streets or public ways, or otherwise encumber the same; they shall keep their stables and stable-yards clean, and shall not permit more than three cords of manure to accumulate and remain in or near the same at any one time between the first day of May and the first day of November; and no manure shall be allowed to accumulate or remain uncovered outside of the stable building. The said owners and occupants shall not, between the first day of May and the first day of November, remove any manure, or cause or suffer the same to be removed, except between the hour of twelve at night and two hours after sunrise, without a written permit from the board of health.

Stables to be
cleaned.

Dec. 2, 1872.

Manure.
Oct. 13, 1873.

SECT. 61. No person shall remove any manure, or cause or suffer the same to be removed, between the first day of May and the first day of November, except between twelve o'clock at night and two hours after sunrise, without a written permit from the board of health.

Manure, re-
moval of.

Dec. 2, 1872.

SECT. 62. No person shall bring into the city, by land or water, or land on any wharf or other place, any decayed or damaged grain, rice, coffee, fruit, potatoes, or other vegetable product, or any tainted or damaged meat or fish, without a permit therefor from, and in such a manner only as directed by, the board of health.

Damaged grain,
rice, etc.
Ibid.

Penalty.
Dec. 2, 1872.

SECT. 63. Every person offending against any of the provisions of this ordinance, for which no penalty is prescribed by the laws of the commonwealth, shall forfeit and pay a sum not less than five dollars, nor more than fifty dollars, for each offence.

Regulations
may be made.
Ibid.

SECT. 64. The board of health are authorized to make and adopt other regulations, not inconsistent with the foregoing provisions, which they may deem necessary for the preservation of the public health.

Contagious dis-
eases, hospitals
for.
Ibid.

SECT. 65. The said board of health shall also have charge of any buildings which are or may be established by the city council within the city limits, or on the islands in Boston harbor, for the admission of patients having the small-pox or any other infectious disease, and they shall make such rules and regulations for the management and government of the patients and employes as they may deem proper and necessary, subject, however, to the approval of the city council. And the said board of health shall carefully guard against the introduction of any cases of infectious disease into any other buildings under their charge than those appropriated for the purpose by the city council.¹

¹ See opinion of city solicitor, Oct. 10, 1872, on files of health department, as to authority of board of health to establish hospitals, and use dwelling-houses for that purpose.

HOSPITALS.

STATUTES.

1. The city of Boston is hereby authorized to erect, under directions of its board of health and inspector of buildings, any wooden buildings within the city, for hospital purposes, the same to remain only so long as the said board deems it necessary: *provided*, that every such hospital shall be constantly guarded outside by a competent force of at least three of the police of said city.¹

City authorized to erect wooden buildings for hospitals.
1873, c. 4, § 1.

CITY HOSPITAL.²

2. The city of Boston is hereby authorized to erect, establish, and maintain a hospital for the reception of persons who by misfortune or poverty may require relief during temporary sickness.

City authorized to establish, etc., hospital for poor persons.
1858, c. 113, § 1.
1873, c. 192.

3. The city council of said city shall have power to make such ordinances, rules and regulations, as they may deem expedient, for the appointment of trustees, and all other necessary officers, agents, and servants, for managing the said hospital.

City council may make ordinances, etc., for appointment of trustees, etc.
1853, c. 113, § 2.

4. Said hospital shall not be erected or located within three hundred feet of any school-house or church now built.

Hospital not to be located near school-house or church.
Ibid. § 3.

¹ Concerning hospitals for dangerous diseases, see "Health," *ante*, p. 385.

² Elisha Goodnow, who died in 1851, bequeathed to the city, by his will dated 12th July, 1849, the sum of twenty-five thousand dollars, for the purpose of establishing in the 11th or 12th wards of the city (as the wards were then defined) a hospital for the sick, — one-half of said funds to be applied for the establishment of free beds, which should always be at the disposal and under the control of the officers of the government of said hospital for the time being. The legislature, by chap. 113, of the acts of 1853, authorized the city to erect and maintain such an institution, and to appoint a board of trustees for its management. A site was accordingly selected comprising the square bounded by Harrison avenue, Concord, Springfield, and Albany streets, — and the city council, in 1861, authorized suitable buildings to be erected thereon. The hospital was completed in 1863, and enlarged in 1875.

ORDINANCES.¹

Election of the
board of trustees of the city
hospital.
Sept. 17, 1869.

SECTION 1. In the month of January, annually, the city council shall elect, by concurrent vote of the two branches, one member of the board of aldermen and two members of the common council, to be members of the board of trustees of the city hospital, to hold office during the remainder of the municipal year in which they are elected, and until others are elected in their place, unless sooner removed. In the month of March or April, annually, there shall be elected, by concurrent vote of the two branches of the city council, two members of the board of trustees of the city hospital, from the citizens at large, to hold their office for three years from the first Monday in May in the year of their election, and until others are elected in their place, unless sooner removed. Said members elected from the city council, and from the citizens at large, shall at all times be subject to removal from office by the city council, for cause; and vacancies from any cause may be filled at any time for the unexpired term, in the same manner as the original appointment.

Organization of
the board of
trustees.
Ibid.

SECT. 2. The persons elected from the city council shall enter upon their duties as members of said board of trustees forthwith; and the persons elected from the citizens at large shall enter upon their duties on the first Monday in May. On the first Monday in May, annually, the members shall meet and

¹ Ordinance relating to the city hospital, passed Dec. 23, 1862; amended June 24, 1863; April 5, 1864; May 1, 1866; Dec. 15, 1866; Sept. 17, 1869; Dec. 22, 1871.

organize themselves into a board, by the choice of a president and secretary from their own number. The said board may appoint such consulting and visiting physicians and surgeons as they may deem expedient; and they may also appoint such subordinate agents, assistants, and domestics, as they may consider necessary, and may remove the same, and shall fix the compensation to be paid to each. A majority of the whole board shall be necessary to constitute a quorum for the transaction of business.

SECT. 3. The said board of trustees shall elect annually, in the month of May, and whenever a vacancy may occur, some suitable person as superintendent of the said hospital, who shall constantly reside at the institution. He may be removed at their pleasure, and shall receive such compensation as the city council may from time to time determine.

Trustees to elect superintendent; his compensation, removal. Dec. 23, 1862. Sept 17, 1869.

SECT. 4. The superintendent, under the direction of the board of trustees, shall have the control of all departments of the hospital, of all subordinate officers, attendants, domestics, and patients, and the charge of the grounds, buildings, and appurtenances.

Powers and duties of superintendent. Dec. 23, 1862.

[SECT. 5. ¹The said trustees shall also have charge of any buildings which are, or may be, established within the city limits, except upon the islands in Boston harbor, by the city council, for the admission of patients having the small-pox, or any other infec-

Trustees to have charge of house for small-pox, etc. Dec. 23, 1862. May 1, 1866. Dec. 22, 1871.

¹This section is virtually superseded by § 65 of the ordinance on "Health," p. 428.

Dec. 23, 1862.
May 1, 1866.
Dec. 22, 1871.

tious disease. And they shall make such rules and regulations for the management and government of the patients and employees as they may deem proper and necessary, subject, however, to the approval of the city council. And the said trustees shall carefully guard against the introduction of any cases of infectious disease into any other buildings under their charge than those appropriated for the purpose by the city council.]

Trustees may
make repairs,
etc.
Dec. 23, 1862.

SECT. 6. The said board may make all necessary repairs and alterations in the several buildings under their charge, and improvements in the land and grounds connected with the institution: *provided*, the expense thereof shall not exceed the amount previously appropriated therefor by the city council. But they shall not make any change in the occupancy of said buildings without first obtaining the approval of the city council.

Hospital in-
tended for tem-
porary relief;
may admit pay-
ing patients.
Ibid.

SECT. 7. The city hospital is established for the reception of those only who require temporary relief during sickness. The trustees may, however, admit other persons to the institution, temporarily, when necessity requires; but such persons shall be removed to other appropriate public institutions as soon as their condition will permit. They may, when compensation therefor is made, afford separate apartments and more accommodations than those which are customary when no compensation is made. Such extra compensation shall be credited to the appropriation for the hospital.

SECT. 8. In the month of May, annually, said board of trustees shall present to the city council a report made up to, and including, the thirtieth day of the preceding April, containing a statement of receipts and expenditures, the condition of the hospital, the number of its inmates, the number of admissions thereto, discharges therefrom, births and deaths therein during the year; and such other information or suggestions as they may deem proper.¹

Trustees to report annually to the city council.
Sept. 17, 1869.

SECT. 9. All moneys which have been or shall hereafter be received, directly or indirectly, by gift or bequest, for the benefit of the city hospital, shall, unless conditions are connected with the gift or bequest inconsistent therewith, be received by the board of trustees of the said hospital, and be by them deposited in the city treasury; and city scrip shall be issued therefor, bearing interest at the rate of six per centum per annum, payable semi-annually, which said scrip shall be deposited with the auditor, who shall receive the interest as the same shall become due thereon, and add it to the moneys appropriated for the use of the hospital. And all real estate and other property not converted into money by sale, and all evidences of title thereto, shall be received by the said board; and all such real estate and other property shall be leased, let, or otherwise improved, by the said board of trustees, and the rent and income thereof added in like manner to the moneys appropriated as aforesaid to the use of the

Gifts and bequests; how to be invested.
June 24, 1863.

¹The records and files of the hospital, with the exception of the medical records, are open to public inspection. See title "Records," p. 659.

June 24, 1863.

hospital. All evidences of title thereto shall be deposited with the auditor.

Gifts, etc., to
make permanent
fund, except, etc.
Ibid.

SECT. 10. All moneys, property, and estate given or bequeathed to the city, for the use of the hospital, unless the donors thereof may have otherwise directed, shall constitute a permanent fund, the principal of which shall not be diminished, and the income of which shall be devoted to the uses of the hospital.

Duties of trustees
in relation to property
donated.
Ibid.

SECT. 11. The board of trustees of the city hospital shall exercise a careful supervision of all property, funds, and estate given or bequeathed for the use of the hospital, so as to prevent any loss or diminution of the value thereof; and in the expenditure of the interest and income thereof they shall in all cases, in which conditions or directions have been attached to the gift or bequest, strictly observe and conform to such conditions or directions.

LUNATIC HOSPITAL.¹

STATUTES.

Boston authorized to erect a hospital for the insane.

1. The city council of the city of Boston are hereby authorized to erect and maintain a hospital, for the reception of insane

¹ For ordinance in relation to directors for public institutions who have charge of the lunatic hospital, see title "House of Correction and Jail," p. 476. The Boston lunatic hospital is situated in South Boston near the house of correction. It was commenced in 1837, and completed in November, 1839, when the insane were first admitted. It was enlarged by the addition of two wings in 1846. It occupies, including the yards and garden, about four and one-half acres of land, which is a part of the purchase of sixty-three acres, made by the city, of Samuel Brown, in 1821.

persons not furiously mad; and provision shall be made for the comfortable support of all persons confined therein. 1839, c. 131, § 1

2. The city council shall have power to pass such ordinances as they may deem expedient for conducting, in a proper manner, the business of the institution, and for appointing such officers as, in their opinion, may be necessary. City council may pass ordinances, etc. Ibid. § 3. 1851, c. 243, § 1.

3. The inspectors of prisons¹ for the county of Suffolk shall be inspectors of said hospital, and shall perform the like duties in relation to it that they are now by law required to perform in relation to the prisons in said county. Inspectors of hospitals. 1833, c. 131, § 4.

4. Such sum per week shall be allowed and paid, for the support of every such person confined as aforesaid, as the mayor and aldermen of the city of Boston shall direct; and if, in any case, there shall be no parent, kindred, master, guardian, town, or city obliged by law to maintain the person so confined, and if he have no means of supporting himself, the same sum shall be paid out of the treasury of the commonwealth, for his support, as may be allowed for other lunatic or insane State paupers. Expense of support. Ibid. § 5. By whom paid.

5. The act of 1840, chapter seventy-nine,² provided that whenever it shall be made to appear, on application in writing to the police court³ of the city of Boston, that any person is insane, not being furiously mad, and is either chargeable or likely to become chargeable to the city or the State, or, being furiously mad, has his legal settlement in, and is chargeable to, said city, the said police court are hereby authorized to order the confinement of such person in the said Boston lunatic hospital, saving to the person complained against the same right to appeal from such order to the municipal court⁴ of the city of Boston, as is now allowed from other judgments of said police court by law. And upon his appeal, the question of his sanity shall, upon his request therefor, be tried by a jury in said court. If, on such appeal, it shall be made to appear that such person is insane as aforesaid, and is, or is likely to be, chargeable as aforesaid, the said municipal court⁴ shall Certain insane; how committed. 1840, c. 79, § 1.

Appeal from police to superior court.

¹ Board of aldermen of Boston. G. S. c. 178, § 62; 1864, c. 311.

² The extent to which the provisions of the first three sections of the special act of 1840 have been superseded by subsequent general legislation is questionable.

³ Now the municipal court.

⁴ Now the superior court for the transaction of criminal business.

1840, c. 79, § 1. affirm the judgment of the said police court,¹ with additional costs, and issue a warrant for his commitment according to law; otherwise, such person shall be discharged.

Notice to be given to mayor, etc.

Ibid. § 2.

6. Any person who shall apply for the commitment of any lunatic, under the provisions of the preceding section, shall first give notice in writing, to the mayor of the city of Boston, of his intention to make such application, and satisfactory evidence that such notice has been given shall be produced to the said police court¹ at the time of making such application. And the said police court¹ may order any further notice of such application to be given to the person complained of, or to any other person or persons in his behalf, as they shall deem to be necessary or reasonable.

Insane, how and by whom discharged.

Ibid. § 3.

7. Any person committed to said hospital by either of the courts as aforesaid, and any person who may be confined in said hospital, upon his removal from the State lunatic hospital, as provided in the fifth section of the act to which this is an addition, may at any time be discharged therefrom by the mayor and aldermen² of the said city of Boston whenever the cause of confinement shall have ceased to exist, or when in the opinion of the said mayor and aldermen such discharge would be for the benefit of the person so confined, or when, in their opinion, such person would be comfortably supported by any parent, kindred, friends, master, or guardian, or by any town or city in which such person may have a legal settlement. And said mayor and aldermen,² whenever in their opinion such lunatic or insane person can in such manner be more comfortably provided for, and the safety of the public will not be endangered thereby, may provide for his custody and support in other places than in said hospital, the said lunatic or insane person still continuing subject to the order and direction of the said mayor and aldermen; or said mayor and aldermen may deliver him to the custody and care of any city or town in which he may have a legal settlement. The expense of so providing for such lunatic or insane person shall be reimbursed in the same manner and recovered by the same remedies as are

Expense of support to be reimbursed.

¹ Now the municipal court.

² The powers enumerated in § 7 are now vested in the board of directors for public institutions.

provided in the sixteenth section of the forty-eighth chapter of the revised statutes:¹ *provided*, that in no case shall the sum charged for such provision exceed two dollars and fifty cents per week.

8. By an act passed June 1, 1867, it is provided that any judge of the municipal court of the city of Boston may, in the absence of the judge of probate for the county of Suffolk, and not otherwise, commit to the state lunatic hospital at Taunton, and the Boston lunatic hospital, any insane person, who, in their opinion, is a proper subject for its treatment or custody, in accordance with the provisions of chapter two hundred and twenty-three of the acts of the year one thousand eight hundred and sixty-two, and the acts in addition thereto.

Judge of municipal court of Boston may commit insane persons to lunatic hospital, if, etc.
1867, c. 355.

9. By an act passed May 12, 1873, it is provided that any trial justice of juvenile offenders of Suffolk county shall have the same jurisdiction as the judge of [the] probate [court] in all matters relating to the commitment of insane persons, and may commit to either of the state lunatic hospitals, or to the Boston lunatic hospital, any insane person, who, in his opinion, is a proper subject for treatment or custody in such hospitals, in accordance with the laws now or hereafter in force in relation to lunatic hospitals and insane persons. Said trial justices shall receive the same fees and compensation as now provided by law for judges of probate [courts] in like cases, to be paid by the county of Suffolk.

Insane persons in Suffolk county may be committed by trial justices for juvenile offenders.
1873, c. 275.

10. By an act passed May 22, 1874, it is provided that when application is made to a trial justice of juvenile offenders in Suffolk county for the commitment of any insane person, if an officer representing the commonwealth, the county of Suffolk or the city of Boston, or any person in behalf of such insane person, shall so request in writing, any two of said justices shall, together, hear and determine such application, under the provisions of law now governing the hearing of such matters before judges of probate courts.

Manner of commitment.
1874, c. 258, § 2.

11. The city of Boston shall provide some convenient place for

Boston to pro-

¹ Sect. 16 of the Revised Statutes, referred to in § 7 in the text, was re-enacted in Gen. Sts. c. 73, § 28, but the last was repealed by act of 1862, c. 223, § 18. How far § 17 in the text may qualify this repeal so far as it relates to Boston — *quære*.

vide convenient
place for trials.
1874, c. 258, § 3.

the trial of juvenile offenders and for hearing applications for the commitment of insane persons which shall be separate and apart from the ordinary and usual criminal trials and business of the courts of Suffolk county.¹

Admittance of
insane not pau-
pers.
1857, c. 281, § 1.

12. By an act passed May 30, 1857, the city of Boston, by and through the agency of the board of visitors² of the Boston lunatic hospital, or by and through any other agency which shall be established therefor by the city council of the city of Boston, may admit into said hospital, as patients, insane persons who are not paupers, upon such terms and conditions and for such compensation as may from time to time be fixed by said city council, or by the authority thereof.

Statement to be
filed.
1862, c. 223, § 5.
See § 5, *ante*.

13. Upon every application for the commitment or admission of an insane person to any hospital or asylum for the insane, there shall be filed with the application, or within ten days after the commitment or admission, a statement in respect to such person, showing as nearly as can be ascertained his age, birthplace, civil condition, and occupation; the supposed cause and the duration and character of the disease, whether mild, violent, dangerous, homicidal, suicidal, paralytic, or epileptic; the previous or present existence of insanity in the person or his family; his habits in regard to temperance; whether he has been in any lunatic hospital, and if so what one, when, and how long; and, if the patient is a woman, whether she has borne children, and, if so, what time has elapsed since the birth of the youngest; the name and address of some one or more of his nearest relatives or friends, together with any facts showing whether he has or has not a settlement, and if he has a settlement, in what place; and if the applicant is unable to state any of the above particulars, he shall state his inability to do so. The statement, or a copy thereof, shall be transmitted to the superintendent of the hospital or asylum, to be filed with the order of commitment, or the application for admission.

Certificate of
physicians to be
filed.
Ibid. § 8.

14. Upon every application for the admission of an insane person to the several state lunatic hospitals, or to any asylum or private house for the reception of the insane, the applicant shall

¹ See "Courts," *ante*, p. 223.

² Now through the agency of the board of directors for public institutions.

file with his application a certificate, signed by two respectable physicians, one of whom, when practicable, shall be the family physician of the patient, certifying after due inquiry and personal examination of the patient by them, within one week prior to the date of the certificate, to the insanity of the person in whose behalf admission is sought, and that such person is a fit subject for remedial treatment at such hospital, asylum, or private house.

15. Upon application for the admission of an insane person to any state lunatic hospital, or to any asylum or private house for the reception of the insane, the applicant shall file with his application a statement containing the names and address of such insane person's father, mother, children, brothers, sisters, or other next of kin, not exceeding ten in number, and over eighteen years of age, when the names and address of such relatives are known by the person or persons making such application, and such statement shall be filed with the order of commitment or application for admission. And the superintendent, or person in charge of such asylum or house for the reception of the insane, shall, within two days from the time of the admission or commitment of any insane person, send, or cause to be sent, a notice of said commitment in writing, by mail, postage prepaid, to each of said relatives, and to any other two persons whom the person committed shall designate.

1862, c. 223, § 8.
1865, c. 268, § 1.

Family statistics
to be filed on
admission of
patient, and
notice to be
given to friends.
Ibid. § 2.
See § 5, *ante*.

16. If at any time all the state lunatic hospitals shall be so full that the inmates cannot all be suitably accommodated therein, and in the opinion of the trustees of either hospital it is proper that some should be removed, the trustees may remove to their respective homes, or to the places of their legal settlement, or of their residence, so many as may be necessary to afford suitable accommodation for the remainder; but only such patients shall be selected for removal as, in the opinion of the trustees and superintendent, are not susceptible of improvement and can be suitably managed at their homes or in the places to which they may be sent.

Removal of in-
sane from State
hospitals.
1862, c. 223, § 13.

17. Nothing contained in chapters seventy-three or seventy-four of the General Statutes shall repeal any provisions of law specially relating to the Boston lunatic hospital, or the confinement, care, and support of insane persons therein.

Boston lunatic
hospital, pro-
viso.
G. S. c. 74, § 12
1839, c. 131.
1840, c. 79.
1851, c. 243.
1857, c. 251, 302.

Person confined
in State lunatic
hospital may be
discharged by
trustees or
court.
1871, c. 321, § 1.

18. Any two of the trustees of either of the state lunatic hospitals, on application in writing, or of their own motion, or any judge of the supreme judicial court at any time and in any county, or the judge of the probate court for the county in which the hospital is located or of the county in which the patient had his residence at the time of his commitment or admission, on such application, after such notice as the said trustees or judge may deem reasonable and proper, may discharge any person confined therein if it appears that such person is not insane, or, if insane, will be sufficiently provided for by himself, his guardian, his relatives, his friends, or the city or town liable for his support, or that his confinement therein is not longer necessary for the safety of the public nor his own welfare.

Proceedings.

Persons not
dangerous and
those incapable
of improvement
may be removed
to town of resi-
dence if, etc.
Ibid. § 2.

19. Any two of the trustees may also remove any person confined therein to the city or town in which the judge or court committing him certified that he resided at the time of the confinement, or to the place of his known lawful settlement, when in their opinion he ceases to be dangerous and is not susceptible of mental improvement at the hospital, if such city or town does not remove him after reasonable notice in writing.

Application to
supreme judicial
court when per-
son is improper-
ly confined as
an insane per-
son.
Ibid. § 3.

20. Any person may, in writing, make application to a judge of the supreme judicial court at any time and in any county, setting forth that he believes or has reason to believe that a person therein named is confined as an insane person in a lunatic hospital or other place, whether public or private, and ought not longer to be so confined, stating also the names of all persons supposed to be interested in keeping him in confinement, and requesting his discharge.

Notice to be
given to super-
intendent, etc.
Ibid. § 4.

21. The judge shall, upon reasonable cause being shown for a hearing, order notice of the time and place of hearing on said application to be given to the superintendent in charge of the hospital, or place of confinement, and to such other persons as he deems proper, and such hearing when ordered shall be had as speedily as conveniently may be before the same or any other judge of the supreme judicial court in any county. The alleged insane person may be brought before the judge, at the hearing, upon a writ of habeas corpus, if any party so requests and the judge deems its proper, and an issue or issues may be framed and

submitted to a jury by direction of the judge or on the request of any person who appears in the case. The jurors may be those in attendance on said court, if in session at the time of the hearing, or may be summoned for the special purpose on venires issued by the clerk of said court upon the order of the judge substantially in accordance with the provisions of chapter one hundred and thirty-two of the General Statutes.

1872, c. 321, § 4.
Issues may be framed and submitted to jury.

22. If it appears upon the verdict of the jury, or in the opinion of the judge, if not submitted to a jury, that the person so confined is not insane, he shall be discharged from such confinement.

If not insane, to be discharged.
Ibid. § 5.

23. Upon complaint of any person confined in any lunatic hospital or other place for the treatment or custody of insane persons, public or private, or of any other person in his behalf, to the general agent of the board of state charities that such person ought not longer to be so confined, the agent shall have power to investigate the case, make report thereof to said board, and if they so direct, shall make application for the discharge of the person so confined to a judge of the supreme judicial court, as provided in section twenty; and the proceedings upon such application shall be as ordered in sections twenty-one and twenty-two of this act. And any district attorney, upon request of the agent, shall aid him and conduct the proceedings in his behalf.

Agent of board of state charities to investigate cases, upon complaints of persons confined in hospital, etc.
Ibid. § 6.

24. All persons confined as patients in the several lunatic asylums in this state shall be allowed to write monthly to the superintendent of the asylum in which they are confined, and to the board of state charities.

Persons in lunatic asylums may write monthly to superintendents, etc.
1874, c. 363, § 1.

25. All patients in such asylums shall be furnished by the several superintendents with all materials necessary for such correspondence. And a locked box shall be placed in each ward in which each writer may deposit his or her communication, said boxes to be opened and letters to be distributed monthly by some member of the board of state charities.

To be furnished with materials for correspondence.
Ibid. § 2.

26. It shall be the duty of the overseers of the poor of any city or town, except the city of Boston, to commit to one of the state lunatic hospitals, or the Boston lunatic hospital, with the consent of the trustees thereof, any person supported by such city or town who is suffering under recent insanity, and is a fit subject for remedial treatment.

Overseers of poor, except in Boston, to commit insane paupers to lunatic hospitals.
1864, c. 238, § 6.

Insane in almshouses, how transferred to hospitals.
1864, c. 288, § 7.

27. Whenever the board of state charities shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any almshouse or other place, whether such insane person is a public charge or otherwise, it shall be the duty of said board to cause application to be made to one of the judges of the supreme judicial, superior or probate courts, for the commitment of such person to a hospital in the manner prescribed by law.

Amounts due hospitals for support of state insane, how adjusted.
Ibid. § 12.

28. It shall be the duty of the board of state charities to certify to the auditor, within one week from the commencement of each quarter of the financial year, the probable amount due to each lunatic hospital for the support of state pauper inmates during said quarter. And upon application of any board of trustees of said hospitals, the auditor may draw his warrant for a sum not exceeding ninety per cent. of the amount so certified, and the same shall be paid to the treasurer of the hospital making the application, to be used towards the payment of its current expenses, incurred within the financial year.¹

LYING-IN HOSPITALS.

Licenses may be issued for establishment of lying-in hospitals.
1876, c. 157, § 1.

1. The mayor and aldermen of any city or the selectmen of any town may license any person to establish or keep within their respective cities and towns a lying-in hospital, hospital ward or other place for the reception, care and treatment of women in labor: *provided*, that the board of health in such city or town shall first certify to the mayor and aldermen or selectmen that the person applying for such license is, in their judgment, a suitable person, and that from the inspection and examination of such hospital, hospital ward or other place aforesaid by said board of health, the same is suitable and properly arranged and provided for such business.

To continue in

2. Such licenses shall continue in force for the term of two

¹ An ordinance relating to the Boston lunatic hospital, passed October 3, 1842, and ordinances in addition thereto, passed March 13, 1845, June 4, 1846, and July 7, 1853, were repealed by the ordinance concerning the public institutions passed August 25, 1857, and amended December 16, 1859.

For laws relating to the insane sent to the state lunatic hospitals, see Gen. Sts. c. 73, act of 1862, c. 223; and 1874, c. 362; also "Paupers," p. 574.

years, subject, however, to revocation by the mayor and aldermen or selectmen of the city or town.

3. Every hospital, hospital ward or other place established or kept by virtue of a license granted as hereinbefore provided, shall be subject to visitation and inspection by the board of health, the chief of police, the mayor of the city or selectmen of the town at any time, and any such hospital, hospital ward or other place which receives in a year more than six women as patients in labor, shall also be subject to visitation and inspection by the state board of health.

force for two
years.
1876, c. 157, § 2.
Hospitals sub-
ject to inspec-
tion.
Ibid. § 3.

4. Whoever establishes or keeps, or is concerned in establishing or keeping any hospital, hospital ward or other place for the purposes aforesaid, or whoever is engaged in any such business, without such license, shall, for the first offence, forfeit a sum not exceeding five hundred dollars, one-half of which forfeiture shall be paid to the complainant and the other half to the city or town, and for any subsequent offence shall be punished by imprisonment in the jail or house of correction for a term not exceeding two years.

Penalties.
Ibid. § 4.

HOUSE OF CORRECTION AND JAIL.

STATUTES.

1. ¹In the county of Suffolk, the court-houses, jails, houses of correction, fire-proof offices, and other necessary public buildings, for the use of the county, shall be provided by the city of Boston, and said city shall pay all county charges.

County build-
ings to be pro-
vided by Boston.
G. S. c. 17, § 6.

2. No city or town shall erect or maintain an almshouse or house of correction within the limits of any other place, without the consent of such other place.

Towns, etc., not
to erect alms-
houses, etc., in
other places,
etc.
G. S. c. 22, § 2.

¹ The aldermen of the city of Boston have the power and perform the duties (with some exceptions) of county commissioners within the city. Gen. Sts. c. 17, § 33. By a special act passed May 20, 1852, c. 266, § 4, it was provided in what manner the aldermen should build, alter, or repair the county buildings, etc. See "Buildings," *ante*, p. 90.

Lands of public institutions not to be taken.

1875, c. 163, § 3.

3. No lands of any public institution belonging to the commonwealth, or any portion of such lands, shall be taken for any highway, town-way, street, turnpike, canal, railroad or street railway, without leave of the legislature previously obtained.

JAIL.

County jails, for what purposes to be used.

G. S. c. 178, § 1.

4. The jails in the several counties shall be used, —

First. For the detention of persons charged with offences and committed for trial:

Second. For the detention of persons committed to secure their attendance as witnesses on the trial of criminal causes:

14 Gray, 226.

Third. For the confinement of persons committed pursuant to a sentence upon conviction for an offence, and of all other persons committed for any cause authorized by law.

The provisions of this section shall extend to persons detained or committed by authority of the courts of the United States, as well as the courts and magistrates of this state, except as is provided in section sixty-one of chapter one hundred and forty-four of the General Statutes.

1863, c. 155, § 2.

Persons charged with desertion from the army of the United States, or from the volunteer forces of the United States, may be confined in jails.

Sheriff may remove prisoners.

G. S. c. 178, § 2.

5. If there are several jails in a county, the sheriff may cause the prisoners to be confined in either, and may at his discretion remove them from one jail to another for their health or safe-keeping, or for their more convenient appearance at court.

Sheriff may furnish employment to prisoners.

Ibid. § 3.

See § 22.

Convicts in jails may be employed to labor on public lands, etc.

1863, c. 99.

6. The sheriff may furnish to the prisoners employment of such nature and in such places as he deems best, and consistent with their safe-keeping; but this section shall not be construed to require the performance of any labor by persons confined in jail.

The commissioners of the several counties, except Suffolk, and the board of directors for public institutions in Boston, may, with the assent of the master or keeper of any jail, employ any person confined therein, pursuant to a sentence upon conviction of an offence, to labor upon the public lands and buildings belonging to the county.

To be reim-

7. In case of the escape of a prisoner by reason of insufficiency

of the jail, whereby the sheriff is made liable to any party at whose suit the prisoner was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse all sums of money recovered by such party of the sheriff on account of the escape.

bursed for damages for escape, etc.
G. S. c. 178, § 4.

8. At the opening of each term of the superior court at which criminal business may be transacted, the jailers of the county shall return to the court a list of all prisoners in their custody, specifying the causes for which and the persons by whom they were committed, and produce and exhibit therewith, for the inspection of the court, their calendars of prisoners, and return a like list of the persons committed during the session of the court, in order that the court may take cognizance and make deliverance according to law of the prisoners committed for crimes within its jurisdiction. Jailers who neglect to make such returns, or to exhibit their calendars, shall be fined in the discretion of the court.

Jailers to return list of prisoners, etc., to court.
Penalty for neglect.
Ibid. § 5.

9. The sheriffs of the several counties shall, during each criminal term of the superior court holden in their respective counties, report to said court the number of prisoners sentenced to labor in houses of correction in the county employed under the provisions of sections eleven and thirteen of chapter one hundred and seventy-eight of the General Statutes, and also the number not so employed, together with the reasons therefor.

Sheriff to report number of employed and unemployed prisoners sentenced to labor in house of correction.
1875, c. 83.

HOUSE OF CORRECTION.

10. There shall be provided by the county commissioners in each county except the county of Dukes county, and in Suffolk by the aldermen of the city of Boston, at the charge of said counties and city respectively, a fit and convenient house or houses of correction, suitably and efficiently ventilated, with convenient yards, workshops, and other suitable accommodations, adjoining or appurtenant thereto, for the safe-keeping, correcting, governing, and employing of offenders legally committed thereto by authority of the courts and magistrates of this state or of the United States.

House of correction, how provided, etc.
G. S. c. 178, § 6.
101 Mass. 24.

11. The yards shall be of sufficient extent for the convenient employment of the persons confined therein, and enclosed by fences of sufficient height and strength to prevent escapes, and

House of correction to have enclosed yards.
Jail may be

used as house of correction. also to prevent all persons without from access to or communication with any persons confined therein. When such house of correction is not provided, the jail or a part thereof may be used for that purpose; but when so used it shall be provided with a sufficient yard, so enclosed.

G. S. c. 178, § 7.

Removal of convicts from one house to another.

1860, c. 164, § 1.

See § 14.

12. In counties where there are two or more houses of correction, and the sentence of prisoners is to either of them, the sheriff, with the concurrence of the county commissioners of such county, may remove any convict, in any one of said houses, to any other within the county, whenever, in the judgment of said sheriff and county commissioners, the health, reformation, safe-keeping, or more profitable employment of any such convict would be promoted by such removal.¹

When removed commissioners to assent, etc. Ibid, § 2.

13. Whenever any convict is removed as aforesaid, the county commissioners, or a majority of them, shall certify their assent to such removal upon the original mittimus, or copy of the same, left with the keeper on the commitment of such prisoner; and such original mittimus or copy shall be transmitted to, and left with, the keeper of the house of correction to which such prisoner is removed, with a return by the sheriff of his doings thereon, and of the expenses incurred thereby, which expenses shall be paid by the county.

Sentence and classification. 1862, c. 127, § 1. See § 12, and note.

14. If there are several houses of correction in a county, the sentence of prisoners shall be to either house of correction therein, and the sheriff may classify the convicts and place them in either house; such classification being subject to the revision of the county commissioners at their next subsequent meeting.

Provisions for reading to be made. Ibid, § 2.

15. In the assignment of cells to prisoners in any house of correction, due regard shall be had to the accommodation of those who are able and desirous to read; and from the first day of October to the first day of April, annually, such provision of light shall be made for all such prisoners confined to labor during the day as shall enable them to read for at least one hour each evening.

¹ A reasonable construction to be put on the acts of 1860, c. 164, and of 1862, c. 127, § 1, being §§ 12 and 14 in the text, would seem to be that the act of 1860 only provided for removals in individual cases, whereas the act of 1862 provided for a general classification and removal from one prison to another. The act of 1862 repealed § 8 of chap. 127 of General Statutes.

16. The commissioners in the several counties, except Suffolk, shall annually, on the first Wednesday of January, appoint to each house of correction two or three suitable persons of the county, other than the sheriff or commissioners, to be overseers thereof, and may remove any overseer and fill vacancies.

Houses of correction, overseers of, how appointed.
G. S. c. 178, § 9.

17. Each overseer shall receive from the county such annual compensation for his services and travel, not exceeding one hundred dollars, as the commissioners determine, and the directors for public institutions in the city of Boston shall receive such compensation as the city council allows.

Compensation of overseers.
Ibid. § 10.

18. The commissioners in the several counties, except Suffolk, and the board of directors for public institutions in Boston, shall cause to be provided, at the expense of said counties and city, respectively, suitable materials and implements sufficient to keep at work all the persons committed to the house of correction, and may from time to time establish needful rules for employing, reforming, governing, and punishing the persons so committed, for procuring and preserving such materials and implements, and for keeping and settling all accounts of the costs and expenses of procuring the same, and of all labor performed by each of the persons so committed.

Materials, etc., for work in; rules and regulations in, etc.
Ibid. § 11.

19. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers, shall see that the rules established for the management of the house of correction and the government of the persons confined therein are strictly observed, examine all accounts of the master relating to the earnings of the prisoners and all expenses of the institution, and keep a fairly written register of their official proceedings.

Board of directors and overseers, general powers and duties.
Ibid. § 12.

20. They may make contracts for work to be done in the house, with any person disposed to supply materials to be there wrought, and in such case may stipulate that the contractor shall furnish some person, to be approved by them, to oversee the labor of the convicts and instruct them in business or trades, conforming to all rules of the prison, and not interfering with the discipline thereof.

May make contracts for work to be done in house, etc.
Ibid. § 13.

21. They may make contracts for letting out to hire during the daytime any of the persons there confined, to employers who live so near to the house of correction that the directors or overseers or the master of the house can have the general inspection of the

May let convicts out to hire, etc.
Ibid. § 14.

G. S. c. 178, § 14. conduct of the persons so let out, and of the treatment they receive.

Convicts may be employed on public lands, etc.

Ibid. § 15.
1863, c. 99.

Females, how sentenced.

G. S. c. 174, § 14.
12 Cush. 237.

Females with infants, etc.

G. S. c. 174, § 12.

22. The commissioners, or directors, may, with the assent of the master or keeper of any house of correction or jail, employ any of the prisoners to labor upon the public lands and buildings belonging to the county.

23. When sentence of confinement at hard labor for any term of time is awarded against a female convict of whatever age, the court shall order such sentence to be executed either in the house of correction or jail, and not in the state prison.

24. When a female with a nursing infant is convicted of an offence punishable by imprisonment in the house of correction, the court or justice before whom the conviction takes place may sentence her to some workhouse or house of industry in the county; and for her support and custody there shall be paid from the county treasury two dollars a week to the town in which the sentence is executed.

Pregnant females may be transferred to workhouse, etc.
Cost of their support.
G. S. c. 178, § 16.

25. When it appears to the physician of a house of correction that a female convict is in a state of pregnancy, any judge of the superior court, or any police court, may, upon application of the master or keeper of the house, or of the convict, revise her sentence so far as to order her to be transferred to any workhouse or house of industry in the same county for such term as is expedient, not exceeding the remainder of her sentence; and may at any time before the expiration of her sentence cause her to be again restored to the house of correction. For the support and custody of each female so transferred, two dollars a week shall be paid by the county to the city or town to which she is transferred.

Female convicts may have custody of their children under a certain age.
Ibid. § 29.

26. When the mother of a child under the age of eighteen months is imprisoned in a house of correction, jail, workhouse, or other place of confinement, and is capable and desirous of taking care of said child, the keeper shall, upon the order of the court or magistrate committing her, or of any overseer of the poor, receive the child and place it under the care and custody of its mother.

How such children may be removed, etc.
Ibid. § 30.

27. When the overseers, inspectors, or other like officers of such institution are satisfied that the health and comfort of such child call for its removal, or that for any cause it is expedient that it should be removed, they shall give notice to the father or other

relatives thereof; and if neither can be found to receive it, to the overseers of the poor of the city or town in which it has a legal settlement, who shall receive it; or if it has no settlement in this state, it shall be sent to one of the state almshouses, as is provided in the case of alien paupers.

28. Rogues and vagabonds, idle and dissolute persons who go about begging, persons who use any juggling or unlawful games or plays, common pipers and fiddlers, stubborn children, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, and lascivious persons in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, mispend what they earn, and do not provide for themselves or for the support of their families, and all other idle and disorderly persons, including therein those persons who neglect all lawful business, and habitually mispend their time by frequenting houses of ill-fame, gaming-houses, or tippling-shops, may, upon conviction, be committed, for a term not exceeding six months, to the house of correction, or to the house of industry or workhouse within the city or town where the conviction is had, or to the workhouse, if any there is, in the city or town in which the offender has a legal settlement, if such town is within the county.

29. All idle persons who, not having visible means of support, live without lawful employment; all persons wandering abroad and visiting tippling-shops or houses of ill-fame, or lodging in groceries, out-houses, market places, sheds, barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, highways, passages or other public places to beg or receive alms, shall be deemed vagrants.

30. It shall be the duty of sheriffs, constables and police officers, acting on the request of any person or upon their own information or belief, to arrest and carry such vagrant before a trial justice or police court within the town or district where such vagrant may be, for the purpose of an examination, and shall then and there make a complaint against such vagrant in due form of law.

31. Whoever shall be convicted upon his own confession, or by

Rogues, vagabonds, etc.
G. S. c. 165, § 28.
8 Met. 513.
5 Gray, 85.
14 Gray, 397.
1 Allen, 6.
4 Allen, 313.
5 Allen, 511.
13 Allen, 550.
See 1864, c. 258.
1869, c. 258.

Enumeration of persons who shall be deemed vagrants.
1866, c. 235, § 1.
13 Allen, 550.
108 Mass. 17.

Officers to arrest and enter complaints against.
Ibid. § 2.

Sentence of vagrants.

1866, c. 235, § 3. other competent evidence, of being a vagrant within the meaning of this act, shall be committed for a term not exceeding six months to the house of correction for the county, or the house of industry or workhouse where the conviction is had.

Known pick-pocket, thief or burglar, when to be deemed vagabond and arrested. Ibid. § 4. 32. Any person known to be a pickpocket, thief or burglar, either by his own confession or otherwise, or by his having been convicted of either of said offences, and having no visible or law ful means of support, when found prowling around any steamboat landing, railroad depot, banking institution, broker's office, place of public amusement, auction room, store, shop, crowded thoroughfare, car or omnibus, or at any public gathering or assembly in any town or city, shall be deemed a vagabond, and shall be taken into custody by any sheriff, deputy sheriff, constable or police

Officer arresting to bring before court. officer ; and the officer making the arrest shall, within twenty-four hours after such arrest (Sunday and legal holidays excepted), bring him before some proper court or magistrate in the city,

Penalty if guilty. town or county where the arrest was made, and if found guilty of being a vagabond, within the meaning of this act, upon a complaint duly made, shall be committed to the house of correction for the term of not less than four nor more than twelve months.

G. S. c. 178, § 17, and c. 165, § 32, to apply. Ibid § 5. See § 38. 33. The provisions of section seventeen of chapter one hundred and seventy-eight, and of section thirty-two of chapter one hundred and sixty-five of the General Statutes shall apply to this act.

Rogues, etc., may be punished by fine, and sentenced conditionally. G. S. c. 165, § 29. 8 Met. 513. 34. When a person is convicted, by a justice of the peace or police court, of any offence mentioned in section twenty-eight, he may, instead of the punishment therein mentioned, be punished by fine not exceeding twenty dollars, either with or without a condition that if the same, with the costs of prosecution, is not paid within a time specified, he shall be committed to the house of correction, house of industry, or workhouse, as is provided in the twenty-eighth section ; which conditional sentence shall be carried into execution according to the provisions of section seven of chapter one hundred and seventy-four of the General Statutes.

Master of house of industry, etc., to receive and set to work persons committed, etc. 35. The master, keeper, director, or overseer, of a house of industry or workhouse to which any person is committed under the twenty-eighth and thirty-fourth sections, shall receive all persons so committed, set them to work if they are able, and employ and

govern them in the manner required by law, and prescribed by the rules and orders established for that purpose; and the city or town in which such house is situated may recover the balance of the expense of the support of any such person over and above the amount of his labor, from the party thus sentenced, or from any kindred, town, or city, liable by law for his support, if he is a pauper, in like manner as if he had been committed to the house of correction for the same offence. G. S. c. 165, § 30.

36. Upon the application of the overseers of a house of correction, the commissioners of prisons may cause any person confined therein under sentence hereafter imposed for any offence mentioned in section twenty-eight of chapter one hundred and sixty-five of the General Statutes [§ 28 of this digest], and chapter two hundred and thirty-five of the acts of the year eighteen hundred and sixty-six [§§ 29, 30, 31, 32 and 33 of this digest], to be transferred, with the mittimus, to the state workhouse, there to be kept during the remainder of the sentence in the same manner as if such person had been originally committed thereto; and the transfer shall be made in the manner prescribed in sections three, five and six of chapter three hundred and seventy of the acts of the year eighteen hundred and seventy [not included in this digest]. The commissioners of prisons shall have the same power to discharge any person so removed as is now vested in the overseers of houses of correction. Vagrants, etc., may be transferred from houses of correction to the state workhouse. 1876, c. 96, § 1.

37. The county from which such person is removed shall pay for his support such sum per week as may be fixed by the board of state charities, and all moneys so received shall be paid into the state treasury in the manner now provided by law. County from which person is removed to pay for support. Ibid. § 2.

38. When it appears to the overseers or directors of a house of correction, house of industry, or workhouse, that a person there confined on conviction before a justice of the peace or before any police court, of either of the offences mentioned in section twenty-eight, has reformed, and is willing and desirous to return to an orderly course of life, they may, by a written order, discharge him from confinement. Any person committed by the superior court, or any police court, for either of said offences, may be discharged by such courts respectively upon the recommendation of the overseers or directors, Certain prisoners supposed to be reformed may be discharged, etc. G. S. c. 178, § 17. 1862, c. 139. See §§ 29-33, ante.

Conviction of certain offenders after discharge on former conviction.

G. S. c. 165, § 34.

39. If a person discharged under the provisions of the preceding section is afterwards convicted of any offence mentioned in section twenty-eight, committed after the former conviction, either in the same or a different county, he may be sentenced, by the magistrate or court before whom the second conviction is had, to hard labor in the house of correction, house of industry, or workhouse, for a term not exceeding one year.

Night-walking, third conviction. Ibid. § 35.

See 1869, c. 258.

40. When a person is convicted as a common night-walker, and it is alleged in the complaint and proved at the trial that the defendant has been previously twice convicted of the same offence, such person may be sentenced to the house of correction, house of industry, or workhouse, if any such is established in the town or city, for a term not exceeding five years.

Night-walkers, etc., committed for third offence may be bound out or discharged in certain cases.

G. S. c. 178, § 18. See § 40.

41. The overseers or directors of any house of correction, workhouse, or house of industry, may, after six months from the time of sentence, discharge any person committed thereto under the preceding section, upon being satisfied that the convict has reformed; or may bind out such person for any term during the period of the sentence, as an apprentice or servant to any inhabitant of this state; and said overseers and directors, and the master, mistress, apprentice, and servant, shall respectively have all the rights and privileges, and be subject to all the duties, set forth in chapter one hundred and eleven of the General Statutes, in the same manner as if such binding were made by the overseers of the poor; and the relations between the parties shall not be affected by the age of the party bound. If the master or mistress is discharged from the contract of service or apprenticeship as provided in said chapter, the person bound shall be returned to the place of confinement, and serve out the original sentence, if any portion thereof is unexpired; but the overseers or directors shall not be liable to the costs of the process provided in said chapter.

G. S. c. 111, relates to masters, apprentices, and servants. See *Paupers*, p. 575.

PROVISIONS RESPECTING JAILS, HOUSES OF CORRECTION, PRISONERS, ETC.

Sheriff to have custody of jail, prisoners, etc.

42. The sheriff shall have the custody, rule, and charge of the jails, and, except in the county of Suffolk,¹ the houses of correc-

¹ In Suffolk the house of correction is under the care of the board of directors for public institutions. See *post*, p. 474.

tion in his county, and of all prisoners therein, and shall keep the same by himself, or by his deputy, as jailer, master or keeper, for whom he shall be responsible. The jailer, master, or keeper shall appoint all subordinate assistants, employees, and officers, for whom he shall be responsible. In the county of Suffolk the board of directors for public institutions shall appoint a suitable person to be master of the house of correction, to hold his office during their pleasure.

Master of house of correction in Suffolk.

G. S. c. 178,

§ 19.

1865, c. 241, § 1.

43. Any master, keeper, or jailer, except in the county of Suffolk, may be removed by the superior court for neglect of duty, or wasteful or extravagant use of supplies, upon complaint of the county commissioners, setting out the facts, and after notice to the sheriff and the person complained of, and a hearing thereon.

Master, how removed.

G. S. c. 178,

§ 20.

44. No officer connected with any prison, house of correction, lunatic hospital, or other public charitable institution, shall be concerned or interested, directly or indirectly, in any contract, purchase or sale, made on account of any of said institutions, or shall corruptly accept any bribe, present, or gratuity from any person interested in such contracts.

Officers of public institutions not to be interested in contracts, etc., or receive bribes.

1872, c. 282, § 1.

45. No person interested, directly or indirectly, in any contract connected with any prison or public charitable institution, shall corruptly give, offer, or promise any officer of such institutions any bribe, gift or gratuity.

No person to give officers bribes, etc.

Ibid. § 2.

46. Any person convicted of a violation of the provisions of the two preceding sections shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the state prison for a term not exceeding two years.

Penalty for violation.

Ibid. § 3.

47. Every sheriff, upon the expiration of his commission, or his resignation or removal from office, shall deliver to his successor all prisoners in his custody, and for that purpose shall retain the keeping of the jails and houses of correction under his care, and of the prisoners therein, until his successor is appointed and qualified.

Sheriff to deliver prisoners to successor.

G. S. c. 178,

§ 27.

48. In case of the death of the sheriff, the jailer, master, or keeper, by him appointed, shall continue in office and retain the custody, rule, and charge of the jail or house of correction, and of all prisoners committed thereto, until a successor to the deceased

Upon death of sheriff, jailer to continue in office until, etc.

Ibid. § 23.

G. S. c. 178, § 28. sheriff is appointed or elected and qualified, or until the governor, by and with the advice of the council, removes such jailer, master, or keeper, and appoints another.

Compensation of sheriff for care of prisoners, etc.
Ibid. § 21.

49. For the safe-keeping of the prisoners committed to his custody, the sheriff shall have such compensation from the county, not less than twenty dollars a year, as the county commissioners, or in the county of Suffolk the mayor and aldermen, order. He shall not receive any rent or emolument from the jailers and keepers of the houses of correction, for the use and occupation of the dwelling-houses provided for them by the county.

Salaries of officers, assistants, etc.
Ibid. § 22.
1864, c. 270, § 1.
16 Gray, 41.

50. The commissioners shall establish fixed salaries for all officers, assistants, and employees, of jails and houses of correction, which shall be in full compensation for all their services, and for which they shall devote their whole time to the discharge of their duties, unless released therefrom by the commissioners.¹

If inadequate, superior court to determine.
G. S. c. 178, § 23.

51. If a sheriff, master, keeper, or jailer deems any such salary inadequate, he may present his petition, showing the facts, to the superior court next to be holden for the county, and the court, after notice to the chairman of the county commissioners, and a hearing, shall fix the salary, and pass such further order in the premises as law and justice require.

Sheriff who acts as jailer, etc., may receive additional compensation.
1860, c. 92, §§ 1, 2.

52. Any sheriff who personally performs the duties of jailer or master of the house of correction may receive in addition to his salary as sheriff, the compensation established by the provisions of section fifty: *provided*, that in no such case such compensation shall exceed one thousand dollars per year, and all laws inconsistent herewith are repealed.²

Jailer, etc., to keep calendar of prisoners.
G. S. c. 178, § 24.

53. The jailer, keeper, or master of each jail and house of correction, shall keep in a bound book an exact calendar of all prisoners committed thereto, and shall cause to be distinctly registered therein the names of all prisoners, their places of abode, additions, and the time, cause and authority of their commitment, and a descrip-

¹ See order of the board of aldermen, *post*, establishing the salaries of the officers at the jail. The salaries of the subordinate officers at the house of correction are fixed by the directors for public institutions. See "Ordinance," p. 478, § 4.

² See under "Contracts with city officers," act 1862, c. 216, relating to extra fees and compensation of officers who receive a salary. p. 207.

tion of the persons of such as are committed on criminal prosecutions, together with such facts as, with the entries in the prison book, will enable the sheriff or directors to make the returns required by sections one hundred and four and one hundred and nine. When a prisoner is liberated, he shall register in the same book the time and authority of such liberation, and, in case of an escape, the time and manner of the escape. Every jailer, master, or keeper neglecting to keep such calendar, or enter such facts therein, shall forfeit one hundred dollars, to be recovered by the commissioners or directors in an action of tort, in the name of the county, or in Suffolk in the name of the city of Boston, and expended by them for the relief of discharged prisoners.

Penalty for neglect.

54. The keeper of every jail and the master of every house of correction shall keep a record of the conduct of each convict whose term of imprisonment is not less than four months, and for every month that a convict appears by such record to have faithfully observed all the rules and requirements of the prison, and not to have been subjected to punishment, there shall be deducted from the whole term of his sentence, whether in one or more cases, as follows: from a term of less than three years, one day; from a term of three and less than seven years, two days; from a term of seven and less than ten years, four days; and from a term of ten years or more, five days; said record shall be submitted to the sheriff and to the overseers of the house of correction, or board of directors for public institutions in the city of Boston, to be considered by them in recommending prisoners to executive clemency.

Record of conduct to be kept, and term of imprisonment reduced in certain cases.
G. S. c. 178, § 47.
13 Gray, 618.

55. The warden of the state prison, the masters and keepers of the several jails and houses of correction in this commonwealth, shall cause to be kept a book of record, in which shall be recorded a correct account of all money or other property found in the possession of prisoners committed to the aforesaid institutions; and said officers shall be held responsible to the commonwealth for the safe-keeping and delivery of said property to said prisoners, either upon their order or receipt at any time before or at the time of their discharge therefrom.

Wardens, masters, etc., to keep account of moneys, etc.
1861, c. 138, § 1.

56. All warrants, mittimus, processes, and other official papers, or attested copies thereof, by which a prisoner is committed, shall be filed and delivered to

Warrants, etc., to be filed, and delivered to

sheriff's suc-
cessor.
G. S. c. 178,
§ 25.

ted or liberated, shall be regularly filed in the order of time, and with the calendar be safely kept in a suitable box for that purpose, and upon the expiration of the sheriff's commission, his death, resignation, or removal from office, be delivered to his successor; and in default thereof the sheriff or his executors or administrators shall forfeit two hundred dollars.

Prisons, etc., to
be white-
washed, kept
clean, etc.
Ibid. § 31.

57. The keeper of each jail and the master of each house of correction shall, at the expense of the county, see that the same is constantly kept in as cleanly and healthful a condition as may be, and shall cause the whole interior thereof, including the floors, to be thoroughly whitewashed with lime at least twice in each year, and the walls and floors of each room, while any person is confined therein, to be so whitewashed once in each month between the first of May and the first of November. No permanent vault shall be used in any apartment. Every room occupied by a prisoner shall be furnished with a suitable bucket with a cover made to shut tight, for the necessary accommodation of such prisoner, and such bucket when used shall be emptied daily and constantly kept in good order.

Cleanliness of
prisoners, their
food, etc.
Ibid. § 32.

58. The keeper and master shall see that strict attention is constantly paid to the personal cleanliness of all prisoners in their custody, and shall cause the shirt of each prisoner to be washed, and the prisoner himself to be shaved, once at least in each week, and, to have a weekly bath of cold or tepid water applied to the whole surface of the body, unless by reason of sickness such bath would be hurtful or dangerous. Each prisoner shall be furnished daily with as much clean water as he has occasion for either as drink or for the purpose of personal cleanliness, and with a clean towel once a week. No clothes shall be washed or hung out wet in any room which is occupied by a prisoner during the night. All prisoners not in solitary confinement shall be served three times each day with wholesome food, well cooked, in good order, and in sufficient quantity.

Classification
and separation
of prisoners.
Ibid. § 33.

59. Male and female prisoners shall not be put or kept in the same room; nor, unless the crowded state of the jail or house of correction requires it, shall any two prisoners, other than debtors, be allowed to occupy the same room, except for work. Persons committed for debt shall be kept separate from felons, convicts, and

persons confined upon a charge of felony or other infamous offence, G. S. c. 178, § 33.
 and all conversation between prisoners in different apartments shall be prevented. Minors shall be kept separate from notorious offenders and those convicted of a felony or other infamous crime. Persons committed on charge of an offence shall not be confined with convicts, and prisoners charged with or convicted of an offence not infamous shall not be confined with those charged with or convicted of an infamous crime, except while at labor or assembled for moral or religious instruction, at which times no communication shall be allowed between prisoners of different classes.

60. The commissioners of prisons may remove from time to time female prisoners, held under sentence imposed after the passage of this act [to establish a reformatory prison for women, St. 1874, c. 385] in any jail or house of correction in the commonwealth, the workhouse at Bridgewater, or in the house of industry at Deer island, to said reformatory prison, where the said prisoners shall serve the remainder of their terms of sentence. Female prisoners in houses of correction, etc., may be removed to reformatory prison. 1874, c. 385, § 15.

61. The keepers of jails and masters of houses of correction, the superintendents of houses of industry and workhouses shall, whenever a female is committed to the prison under their respective charge, forthwith transmit to the secretary of the commissioners of prisons such an abstract of the mittimus on which she is committed as the said commissioners may prescribe. Keeper of jail, etc., to send to commissioners abstract of mittimus on which a woman is committed. Ibid. § 20.

62. The commissioners of prisons, appointed under chap. 370 of the acts of the year 1870, shall, as far as practicable, classify all prisoners held under sentence in all the jails and houses of correction in the state, or that may be committed thereto at any time hereafter, having reference to sex, age, character, condition and offences, and in such a manner as to promote the reformation, safe custody, and economy of support of the prisoners, and the separation of male and female prisoners; and for this purpose may remove prisoners from one jail to another jail in the same or in any other county, and from one house of correction to another in the same or in any other county, and the said prisoners shall serve the remainder of their terms of sentence in the prisons to which they shall be so removed from time to time. Commissioners of prisons to classify prisoners in jails and houses of correction. 1870, c. 370, § 2.

63. It shall be the duty of the officers having custody and charge of prisoners in the several prisons, jails, workhouses and To separate male and female prisoners. May remove prisoners from one jail, etc., to another.
Cell to be used for solitary imprisonment to

be ventilated and furnished with suitable bedding, etc. 1876, c. 61, § 1.

Records to be kept of punishments by solitary confinement. Ibid. § 2.

Prison commissioners to examine whether provisions are complied with. Ibid. § 3.

Execution of sentence to solitary imprisonment.

G. S. c. 178, § 34.

Shall be kept to hard labor; but not in engraving or printing. Log and chain may be used. Ibid. § 35.

houses of correction in this commonwealth, to provide that every cell therein which may be used as a place for solitary imprisonment shall be properly ventilated, and furnished with a form of boards not less than six and one-half feet in length and not less than eighteen inches in width, raised at least four inches from the floor, and provided with a sufficient amount of bedding to protect the inmate from any unnecessary injury to health.

64. It shall be the further duty of said officers at each of said institutions, to keep a book for the record of punishments by solitary imprisonment, and to record therein each such punishment as follows: Name and number, or other sufficient designation of the person punished; the day and hour when put in "solitary;" the day and hour when released; the offence; and such remarks as may be necessary to complete the record.

65. It shall be the duty of the prison commissioners to examine whether the provisions of this act are complied with in the several jails, workhouses and houses of correction of the commonwealth.

66. When a convict is sentenced to solitary imprisonment and hard labor in a jail or house of correction, the master or keeper shall execute the sentence of solitary imprisonment by confining the convict in one of the cells, or, if there is none, then in the most retired and solitary part of the jail or house, and during the time of solitary imprisonment the convict shall be fed with bread and water only, unless other food is necessary for the preservation of his health. No intercourse shall be allowed with any convict in solitary imprisonment, except for the conveyance of food and other necessary purposes.

67. As soon as the term of solitary imprisonment has expired the master or keeper shall furnish the convict with tools and materials or other means for work in a suitable manner, in which he can be usefully or profitably employed, either in the house of correction or jail, or in the close yard thereof; but no convict shall be employed in engraving or printing of any kind. Such convict may, if necessary, be confined by a log and chain, or in such other manner as shall prevent his escape without unnecessarily inflicting bodily pain or interrupting his labor. The overseers, or, when the punishment is inflicted in the jail, the sheriff, shall oversee the execution of all such sentences.

68. If a convict is refractory, or, during the time for which he is sentenced to hard labor, refuses or neglects, without reasonable cause, to labor in a suitable manner when required, he shall be kept in solitary confinement and fed on bread and water, as before provided, so long as he is refractory or refuses to labor; but no keeper of a jail or master of a house of correction shall confine in solitary imprisonment any convict for more than three days at one time, without informing the sheriff or overseers thereof and the reasons therefor.

Punishment of prisoners refusing to work, etc.; not to be in solitary more than three days, etc.
G. S. c. 178, § 36.
3 Allen, 171.

69. Whoever, lawfully imprisoned in any place of confinement established by law, other than the state prison, breaks therefrom and escapes, or forcibly breaks the same with intent to escape, or by force or violence attempts to escape therefrom, shall be punished by imprisonment in the state prison not exceeding five years, or in the jail or house of correction not exceeding three years, or by fine not exceeding one thousand dollars.

Punishment for prisoners escaping, etc.
G. S. c. 178, § 46.
4 Met. 361.
5 Met. 555.
5 Allen, 130.
101 Mass. 24.

70. If a person confined in a jail or house of correction upon a conviction or charge of an offence against the commonwealth, is refractory or disorderly, or wilfully or wantonly destroys or injures any article of furniture or other property, or any part of such prison, the sheriff, overseers, or board of directors for public institutions, respectively, after due inquiry, may cause him to be kept in solitary confinement, not more than ten days for one offence; and during such confinement he shall be fed with bread and water only, unless other food is necessary for the preservation of his health.

Punishment of refractory prisoners.
G. S. c. 173, § 37.

71. If a person committed to jail on mesne process or execution, or for any other cause than those mentioned in the preceding section, is, on complaint of the keeper, convicted before a justice of the peace, or police court, of either of the offences therein specified, he shall be punished by solitary imprisonment; as directed in said section, not more than ten days for each offence. He shall also be liable for double the amount of the damage done to the jail; furniture, or other property, to be recovered in an action of tort, which may be brought by the sheriff or county treasurer in the name and to the use of the county.

Punishment of poor debtors, etc., who commit depredations.
Ibid. § 38.

72. The two preceding sections shall not affect the authority of a sheriff, jailer, or master of a house of correction, to preserve

Sheriff's and keeper's authority not affected.
Ibid. § 39.

G. S. c. 178, § 39. order and enforce strict discipline among the prisoners in his custody.

Moral and religious instruction to prisoners, etc.
Ibid. § 40.

73. The keeper or master shall, at the expense of the county, provide for each prisoner under his charge who is able and desirous to read, a copy of the bible or of the new testament, to be used by such prisoner at proper seasons during his confinement; and the county commissioners may, in their discretion and at the expense of their county, provide moral and religious instruction for the prisoners confined in the jails and houses of correction of their respective counties. Prisoners in the state prison, or in any jail, house of correction, almshouse, or other place of confinement, may, in their illness, on request of the warden, keeper, or master, receive the visits of any clergymen they may desire.

Prisoners not to be denied free exercise of religious belief, etc.
1875, c. 126, § 1.

74. No inmate of any prison, jail or house of correction in this commonwealth shall be denied the free exercise of his religious belief and liberty of worshipping God according to the dictates of his conscience, within the place where such inmate may be kept or confined; and it shall be the duty of the officers and boards of officers having the management and direction of any such institutions to make such rules and regulations as may be necessary to carry out the intent and provisions of this act.

Discipline not to be impaired.
Ibid. § 2.

75. Nothing contained in the foregoing section shall be so construed as to impair the discipline of any prison so far as may be needful for the good government and safe custody of its inmates.

Instruction in reading and writing.

G. S. c. 178, § 41.

76. The county commissioners of each county, and the aldermen of the city of Boston, with the sheriff of the county, may, at the expense of their county or city, furnish suitable instructions in reading and writing for one hour each evening, except Sundays, to such prisoners as may be benefited thereby, and are desirous to receive the same.

Burial of deceased prisoners.
Ibid. § 26.

77. When a person, imprisoned for any cause, dies in prison, the sheriff or the keeper shall deliver the body to his relations or friends, if they request it. If no application is made therefor, the sheriff or keeper shall bury the same in the common burying-ground, and the expenses be paid by the city or town in which such person had a legal settlement, if any, otherwise by the county.

78. No sheriff, jailer, master of a house of correction, or other

officer, or under-keeper of a prison, shall, under any pretence, give, sell, or deliver, or knowingly suffer to be given, sold, or delivered, to any person committed to jail for debt and supported at the charge of the creditor, or to a prisoner in confinement upon conviction or charge of an offence, any spirituous liquor or mixed liquor, part of which is spirituous, or any wine, cider, or strong beer, unless the attending physician of the prison certifies in writing that the health of the prisoner requires it; in which case he shall be allowed the quantity prescribed, and no more.

Spirits and strong drink prohibited, unless, etc.
G. S. c. 178, § 42.

79. Whoever gives, sells, or delivers to a person confined in a jail, house of correction, house of industry, workhouse, or prison, or to a person in custody of a sheriff, constable, police officer, jailer, master of a house of correction, or warden of a prison, any spirituous or other liquors, as mentioned in the preceding section, or has in his possession, within the precincts of any jail, house of correction, or other place of confinement mentioned in this chapter, any such liquors, with intent to convey or deliver the same to any person or prisoner confined therein, unless under the direction of the physician appointed to attend such prisoner, shall be punished by fine not exceeding fifty dollars, or by imprisonment in the jail or house of correction not exceeding two months.

Penalty for furnishing, or attempting to furnish, spirits, etc., to prisoners.
Ibid. § 43.

80. If a sheriff, jailer, or master of a house of correction gives, sells, or delivers to any prisoner in his custody, or willingly or negligently suffers such prisoner to have or drink any spirituous, fermented, or other strong or mixed liquor, prohibited by section seventy-eight,¹ or places or keeps together prisoners in his custody of different sexes or classes, contrary to the provisions of section fifty-nine,² he shall in each case forfeit for the first offence twenty-five dollars, and for any such offence committed after the first conviction fifty dollars, and shall on such second conviction be further sentenced to be removed from office and to be incapable of holding the office of sheriff, deputy-sheriff, or jailer, or master or keeper of any prison, for the term of five years.

Penalty for neglect of duty by sheriff, jailer, etc.
Ibid. § 44.

81. The sheriffs of the several counties, and the board of directors for public institutions in Boston, shall forthwith remove any officer by them respectively appointed to any position of trust or

Officers using intoxicating liquors to be removed.
Ibid. § 45.

Being Gen. Sts. c. 178, § 42.

² Being Gen. Sts. c. 178, § 33.

G. S. c. 178, § 45. authority in the jails and houses of correction, who is known to use intoxicating liquors as a beverage.

Removal of
prisoners in case
of pestilence.
Ibid. § 48.

82. If disease breaks out in a jail or other prison, which in the opinion of the inspectors of the prison may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing some suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners. Such designation being filed with the clerk of the superior court, shall be a sufficient authority for the sheriff, jailer, master, or keeper, to remove all the prisoners in his custody to the place designated, and there to confine them until they can be safely returned to the place whence they were removed. Any place to which the prisoners are so removed shall during their imprisonment therein be deemed a prison of the county in which they were originally confined, but they shall be under the care, government, and direction of the officers of the county in which they are confined.¹

Removal in case
of danger from
fire.
Ibid. § 49.

83. If a jail or other prison, or any building near thereto, is on fire, and the prisoners are exposed to danger thereby, the sheriff, jailer or other person having charge of the prison, may remove such prisoners to a place of safety, and there confine them so long as may be necessary to avoid the danger, and such removal and confinement shall not be deemed an escape of the prisoners.

EXPENSE OF SUPPORTING PRISONERS, ETC.

Commissioners
to procure sup-
plies, etc.
Ibid. § 50.

84. The commissioners, except in the county of Suffolk, shall, without extra charge or commission to themselves or any person, procure, or cause to be procured, all necessary supplies for the jails and houses of correction, to be furnished and purchased under their direction and at the expense of the county.

Expense of sup-
porting convicts
in jails, etc.,
how paid.
Ibid. § 51.
8 Met. 513.

85. All charges and expenses of safe-keeping, maintaining, and employing convicts sentenced to imprisonment in the jail or house of correction, of the safe-keeping of persons charged with offences, and committed for trial or sentence, and, except in the county of Suffolk, of prisoners committed on mesne process or

¹ See provisions for removal and returns of removal in case of dangerous diseases, and for the vaccination of prisoners, Gen. Sts. c. 26, p. 382.

execution, so long as the fees for their board are paid by the defendant or debtor, plaintiff or creditor, shall be paid from the county treasury, the accounts of the keeper or master being first settled and allowed by the commissioners, or in the county of Suffolk by the board of accounts; and no allowance therefor shall be made by the commonwealth. G. S. c. 178, § 51.

86. The county commissioners, and the aldermen of the city of Boston, may order such sums of money as may from time to time be necessary, to be advanced out of the treasuries of their counties or city to the master of the house of correction or keeper of the jail, for the purpose of providing such tools, materials, and other things, as may be required for the employment, restraint, and safe-keeping of the convicts; and the master or keeper shall appropriate the same under the direction of the officers ordering the advancement, and account to them for the expenditure thereof. Advancement of money for tools and materials, etc. Ibid. § 52.

87. Each master or keeper shall cause the articles manufactured by the prisoners in his custody, or the produce of their labor, to be disposed of to the best advantage, and under the direction of said commissioners or aldermen shall cause accounts to be kept of the proceeds thereof, and shall present such accounts to them for settlement semi-annually, and as much oftener as they deem it necessary. He shall pay into the treasury of the county or city, at such time as said officers direct, the amount of sales and other proceeds of the labor and earnings of the prisoners in his custody, or the balance thereof. Masters, etc., to keep account of earnings, etc. Ibid. § 53.

88. The master or keeper shall furnish, at the expense of the county, necessary fuel, bedding, and clothing for all prisoners in his custody upon charge or conviction of any offence against the commonwealth, and shall present to the county commissioners, or in the county of Suffolk the board of accounts, a full account of his charges so incurred, and also for necessary furniture for the prison; and the commissioners or board of accounts shall make a reasonable allowance therefor, which shall be paid from the county treasury. Master, etc., to supply fuel, etc. Allowance therefor. Ibid. § 54.

89. When the commissioners or the aldermen of the city of Boston direct specific rations or articles of food, soap, fuel, or other necessities, to be furnished to the prisoners, the keeper or master shall conform to such direction, and if he refuses or neg- Master, etc., to obey orders for furnishing specific rations. Penalty. Ibid. § 55.

G. S. c. 173, § 55. lects to furnish the same, he shall be subject for a first and second offence to the penalties prescribed by section eighty for the offences therein mentioned.

Compensation of master of house of correction in Suffolk. 90. The board of directors for public institutions in Boston shall from time to time determine what sum the master of the house of correction for the county of Suffolk shall receive for the board of the persons committed to his custody, and the master shall in addition to such board receive such further compensation for his services as the city council of Boston deem just and reasonable.

Overseers, etc., to audit accounts for support of convicts, etc. 91. In the county of Suffolk the board of directors for public institutions, and in other counties the overseers of the houses of correction, shall twice in each year, and oftener if necessary, examine and audit the accounts for the care and expense of supporting and employing the persons committed to the houses of correction in their county, and certify what sum is due for supporting and employing each person, after deducting the net profit of his labor. If any of said persons refuse or neglect, for fourteen days after demand in writing by the master or keeper, to pay the sum so certified to be due, the commissioners or directors may commence an action of contract in the name of their county, or in Suffolk in the name of the city of Boston, and recover against such person the sum found to be due; but the defendant may prove on the trial that the whole sum allowed and certified by the directors or overseers was not due, and may, as in other cases, tender, bring into court, or offer judgment for, such sums as he admits to be due.

Support of poor convicts; how recovered of kindred or town., etc. 92. When they certify that a sum is due for supporting and employing any person who has not sufficient estate to pay the same, such sum may be recovered by the county, or in Suffolk by the city of Boston, of any parent, master, or kindred, by law liable to maintain him. If he is committed for any offence mentioned in section twenty-one of chapter one hundred and sixty-one of the General Statutes [not included in this digest], or section twenty-eight of chapter one hundred and sixty-five [§ 28 of this digest], such sum, to an amount not exceeding one dollar a week, may be recovered of the city or town where he has his lawful settlement, and any city or town paying such sum may recover the

same of any parent, master or kindred, by law liable to maintain him. 1876, c. 148.

93. Upon refusal or neglect to make payment for thirty days after the same is demanded in writing of the parent, master, or kindred, or of any member of the city council of the city, or any overseer of the poor of the town, respectively liable by law therefor, the county, or in Suffolk the city of Boston, at any time within two years after the account has been so certified, and not afterwards, may commence and maintain an action for the same, against the party so liable, in the form of action and subject to the defence prescribed and allowed in section ninety-one.

Support of poor convicts; how recovered of kindred, or town.
G. S. c. 178, § 59.
20 Pick. 112.
22 Pick. 211.

94. When a person is committed for whose support a city or town may be liable under section ninety-two, the master or keeper shall immediately give notice thereof in writing, by mail or otherwise, to the mayor and aldermen, or selectmen of such city or town.¹

Support of poor convicts; notice to town liable for.
Ibid. § 60.

95. The supreme judicial court, or superior court, holden in any county in the commonwealth, may commit any person under sentence to the house of correction in any county in the commonwealth in the same manner as such person might be committed in the county where the court is so holden. And the master of the house of correction where such person shall be so ordered to be committed, shall receive and detain such person in the same manner as if committed by the court sitting in the county where said house of correction is situated. And there shall be paid to the county in which said house of correction is situated, by the county from which such person is sentenced, for the support of such person, such sum as shall be agreed upon by the county commissioners of said counties; and in case said commissioners shall not be able to agree upon the amount to be paid, representation of the facts may be made to the superior court sitting in either of said counties, and the amount to be paid shall be determined by said court.

May be sentenced to house of correction in any county.
1866, c. 230, § 2.
12 Allen, 421,
424, 428.

Convicts, when committed out of their county, expenses of support, how paid.

96. Jailers and masters of houses of correction shall have a prison book, in which they shall keep an account of the value of labor of the prisoners, and the salaries of officers; and also of articles furnished for the support of the prisoners, the quantity, of

Jailers, etc., to keep a prison book, etc.
G. S. c. 178, § 61.
13 Gray, 439.

¹ A city is not liable for the support of a convict in a house of correction under Gen. Sts. c. 178, §§ 58-60, if notice of commitment is not given for six months. 109 Mass. 162.

G. S. c. 178, § 61. whom bought, and price paid, classified as follows: first, cost of provisions, including the portion consumed by the family of the jailer or master; second, cost of clothing; third, cost of beds and bedding; fourth, cost of medicines; fifth, cost of medical attendance; sixth, cost of instruction, religious or otherwise; seventh, cost of fuel; eighth, cost of light; ninth, allowance to discharged prisoners; tenth, allowance to witnesses in money and clothing. The prison book, verified by the oath of the jailers or masters, shall be exhibited to the commissioners or directors, when their accounts are presented for examination, and at other times when demanded. A jailer or master who neglects to keep such book, or enter therein such facts, or wilfully makes any false entry therein, shall forfeit one hundred dollars, to be recovered by the directors or commissioners in an action of tort in the name of the county, or in Suffolk of the city of Boston, and expended by them for the relief of discharged convicts.

Penalty for neglect.

INSPECTORS OF PRISONS.

Inspectors of prisons, etc.
Ibid. § 62.

1864, c. 311, § 1.
Keepers, etc., to make stated returns.

G. S. c. 178, § 63.

97. The commissioners for the several counties shall be inspectors of the prisons in their counties.¹

98. The keeper, master, or superintendent, of each jail, house of correction, or other place of confinement required to be inspected, shall, at least twice in each year, make returns to said inspectors, at such time and in such form as they direct, setting forth the name, age, and residence, if known, of each person who is or has been in custody since the last return, the cause of imprisonment, and the manner in which he has been treated and employed, the punishments inflicted, and the names of all persons who have died, escaped, been pardoned, or discharged, with all other circumstances required by the inspectors.

Inspectors of prisons, powers and duties of.
Ibid. § 64.

99. The commissioners shall, twice in each year, at intervals not exceeding eight months, by themselves or a committee of not less than two of their members, visit and inspect all the prisons in their county, and fully examine into everything relating to the government, discipline, and police thereof. The committee shall as soon as may be after each inspection make and subscribe a detailed report to the commissioners, stating the condition of each

¹The board of aldermen of Boston exercise these powers as county commissioners of Suffolk.

prison as to health, cleanliness, and discipline, at the time of inspection; the number of persons confined there within the six months next preceding, or since the last inspection, and for what causes; the manner in which any convicts have been employed; the number of persons usually confined in one room; the distinction, if any, usually observed in the treatment of the different classes of persons detained in such prisons; the punishments inflicted; any evils or defects in the construction, discipline, or management, of such prisons; the names of the prisoners who have died, escaped, been pardoned, or discharged; and whether any of the provisions of law in relation to such prisons have been violated or neglected, with the causes, if known, of such violation and neglect.

100. When the inspectors, or any of them, visit any of said prisons, either for the purpose of inspection or any other cause, the sheriff, master, keeper, or other officer having charge thereof shall admit them when required into every apartment of such prison, exhibit all books, precepts, documents, accounts, and papers, relating to the concerns of the prison, or to the detention or confinement of any person therein, which may be required, and afford to them such aid as may be requested in the performance of any part of their duties. The inspectors or their committee may examine on oath to be administered by one of them, either by interrogatories in writing, to be answered in writing, and subscribed, or otherwise, as they may direct, any officer, keeper, or other person, in relation to the concerns or management of any prison; they may also, apart and without the presence of any officer or keeper, converse with any of the prisoners.

Inspectors to have access to books, accounts prisoners, etc. Ibid. § 66.

101. If it appears to the inspectors, from the report of their committee or otherwise, that any of the provisions of law in relation to prisons have been violated or neglected in their county, they shall forthwith give notice thereof to the district-attorney.

Inspectors to notify district-attorney of violations of law. Ibid. § 67.

102. The commissioners of prisons, or one of them, shall visit all the jails and houses of correction in the state once in six months, and oftener if they see fit, for the purpose of inspecting the books and all the concerns of said jails and houses of correction, and ascertaining whether the laws, rules and regulations are duly observed, the officers competent and faithful, and the convicts

Commissioners of prisons to visit jails, etc., as often as once in six months, and see that rules are observed. 1870, c. 370, § 8.

1870, c. 370, § 8. properly governed and employed ; and for this purpose shall have all the powers in respect to such jails and houses of correction that the county commissioners or the directors for public institutions in the city of Boston now have as inspectors of prisons in their several counties.

RETURNS.

Inspectors to
make annual re-
turns to gov-
ernor.
G. S. c. 178, § 68.

103. The inspectors shall, on or before the fifteenth day of October in each year, cause to be transmitted to the governor authentic copies of any information by them given to the district-attorney in relation to any violation or neglect of the law respecting prisons, and a statement of the expenses incurred in providing moral and religious instruction for the prisoners confined in the jails and houses of correction in their respective counties, with such further statements and suggestions as may in their opinion require the attention of the government.

Weekly returns
of commitments
to be made.
1864, c. 307, § 1.
1872, c. 24.

104. The secretary of the board of state charities shall furnish, from time to time, to the keepers of the several prisons and work-houses throughout the commonwealth, including the state prison and the houses of industry, reformation, and correction, in the city of Boston, the following blank schedule for periodical returns, which shall be made weekly from all prisons where the commitments average ten a week and upwards ; monthly from all prisons where the commitments average between two and ten a week ; and once in six months from all other prisons. The commissioners of prisons shall have free access to said reports and returns.

ADMISSIONS.

Registered number ; name ; color ; age ; sex ; birthplace ; parents both Americans ; parents both temperate ; parents both or either convicts ; ever married ; intemperate ; what education ; what property ; ever in army or navy ; ever in reform school ; when committed ; why committed ; number of former commitments ; when discharged ; how discharged ; length of sentence ; number of days sick ; number of times punished in prison.

DISCHARGES.

Registered number; name; when committed; why committed; 1864, c. 307, § 1.
when discharged; how discharged; time in prison; number of
days sick; number of times punished in prison; number remain-
ing by last report; number committed since last report; number
discharged; number transferred from other jails, etc.; number
transferred to other jails, etc.; number now in confinement.

105. The said secretary shall also furnish the sheriffs of the several counties, the board of directors for public institutions of the city of Boston, and the warden of the state prison, with the following blank schedule for annual returns, to be made on the first day of October in each year, and lodged with the said secretary before the fifteenth of October: —

Annual returns
of expenses to
be made.
Ibid. § 2.

1. Names and salaries of every officer employed and paid in and about the prison.

[NAME.]

[DUTY.]

[SALARY.]

2. Sum expended for provisions. 3. Sum expended for cloth-
ing. 4. Sum expended for fuel and light. 5. Sum expended for
beds and bedding. 6. Sum expended for medicine and medical
attendance. 7. Sum expended for instruction of prisoners. 8.
Sum allowed to discharged prisoners. 9. Sum allowed to wit-
nesses. 10. Sum expended for all other purposes. 11. Total
amount expended. 12. Amount received for labor of prisoners.
13. Nature of instruction given. 14. Number of volumes in the
prison library. 15. Number of prisoners vaccinated. 16. Num-
ber of persons committed for non-payment of fine and costs. 17.
Number of persons who paid fine and costs. 18. Amount received
for fines and costs.

106. The board of county commissioners in any county, when applied to therefor by the sheriff, shall make a return to him on or before the tenth day of October, of the amount expended by them, or with their approval, to provide all necessary supplies for the jails and houses of correction, necessary to enable him to comply with the requirements of the preceding section.

County com-
missioners to
report to sheriff
in certain cases.
Ibid. § 3.

107. Every sheriff or prison officer who omits to make and Penalty for

neglect to make returns. 1864, c. 307, § 4. transmit, according to the provisions of this act, true answers to the inquiries contained in the schedules, and every director or county commissioner, when his board omits to make and transmit such answers, shall forfeit one hundred dollars.

District-attorney to make complaint. Ibid. § 5. 108. The secretary, when he finds that a sheriff, county commissioner, or director is liable to a forfeiture under the provisions of this act, shall forthwith notify the district-attorney for the district in which such sheriff or director resides, who shall immediately institute a complaint therefor, and the forfeiture recovered shall be applied by the county for the relief of discharged convicts.

Sheriffs, etc., to make returns. Abstract. G. S. c. 178, § 70. 109. On or before the fifteenth day of October in each year, in the county of Suffolk, the board of directors for public institutions shall, in relation to houses of correction, and the sheriff in relation to jails, and in each of the other counties the sheriff in relation to both jails and houses of correction, shall make and transmit to the secretary of the commonwealth true answers to the inquiries contained in the blanks mentioned in sections one hundred and four and one hundred and five. The secretary shall prepare and transmit an abstract thereof, in a printed form, to the legislature at the ensuing session thereof.

Penalties for neglect. Ibid. § 71. 110. Every sheriff who omits to make and transmit, according to the preceding section, true answers to such inquiries, and every director, when his board omits to make and transmit such answers, shall forfeit one hundred dollars.

Prosecution of delinquents. Ibid. § 72. 111. The secretary, when he finds that a sheriff or director is liable to a forfeiture under the preceding section, shall forthwith notify the district-attorney for the district in which such overseer or director resides, who shall immediately institute a complaint therefor, and the forfeiture recovered shall be applied by the county for the relief of discharged convicts.

Keepers to keep full and accurate records. 1874, c. 264, § 1. 112. It shall be the duty of the keepers of all prisons and work-houses in the commonwealth, including the state prison, the state workhouse, the reformatory prison for women, and the houses of industry and correction in the city of Boston, to keep full and accurate records of all prisoners admitted and maintained in, or discharged from, their several prisons, and to make such returns concerning them as may be required from time to time by the commissioners of prisons.

Annual returns. 113. Such annual returns of the number, cost of support, sala-

ries of prison officers, employment and earnings of prisoners, and other particulars in regard to the several prisons in the commonwealth, their management and discipline, as may be required from time to time by the commissioners of prisons, shall be made by the warden and inspectors of the state prison, the superintendent of the state workhouse, the authorities of the reformatory prison for women, the sheriffs and commissioners of the several counties, and the board of directors of public institutions for the city of Boston, on or before the fifteenth day of October in each year. 1874, c. 284, § 2.

114. If any of the officers enumerated in section one hundred and thirteen neglect or refuse to make the returns prescribed at the time specified by the commissioners of prisons, or withhold the annual return after the fifteenth day of October in each year, said officer shall forfeit one dollar for each day's neglect, and the amount of such forfeiture shall be deducted from any salary or compensation allowed by law to such officer, at the first monthly payment after the fact of such forfeiture having been incurred is reported to the proper auditing and disbursing officer. *Penalty for neglect. Ibid. § 3.*

COMMITMENTS AND DISCHARGES.

115. Whoever is convicted of an offence punishable wholly or in part by imprisonment in the jail may be sentenced to suffer such imprisonment in the house of correction instead of the jail, or to suffer solitary imprisonment and be confined at hard labor either in the jail or house of correction. *Courts may sentence to jail or house of correction. G. S. c. 174, § 4. 2 Met. 419. 4 Met. 361.*

116. Whoever is convicted of a crime punishable by fine, and liable to imprisonment in the jail for the non-payment of fine and costs of prosecution, may be sentenced to suffer such imprisonment in the house of correction instead of the jail, and confined at hard labor either in the jail or house of correction. *Same subject. Ibid. § 5.*

117. When a person is convicted of an offence punishable at the discretion of the court, either by fine or imprisonment in the jail or house of correction, or by fine or imprisonment in the state prison, the court or justice may award against such offender a conditional sentence, and order him to pay fine with or without the costs of prosecution, within a limited time, to be expressed in the sentence, and in default thereof to suffer such imprisonment as is provided by law. *Conditional sentences. Ibid. § 6. 23 Pick. 280. 2 Met. 411, 412. 5 Met. 560.*

Same subject.
G. S. c. 174, § 7.
See 1866, c. 280,
§ 1.

118. The person against whom any such conditional sentence is awarded shall be forthwith committed to the custody of an officer in court or to the jail, to be detained until the sentence is complied with; and if he does not pay the fine and costs imposed within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

Court may im-
pose fine or
imprisonment,
except, etc.
Ibid. § 8.

119. When it is provided that an offender shall be punished by imprisonment in the jail and a fine, or by imprisonment in the house of correction and a fine, such offender, unless convicted under chapter eighty-six,¹ may at the discretion of the court be sentenced to be punished by such imprisonment without the fine, or by such fine without the imprisonment.

Limitations of
confinement in
certain cases.
1865, c. 44, § 1.

120. When a convict has been confined in a prison, house of correction, jail, or other place of confinement, thirty days for fine, or fine and costs not exceeding ten dollars, or forty days for fine, or fine and costs not exceeding twenty dollars, he shall be discharged.

Poor convicts,
how discharged
from prison
after three
months.
G. S. c. 180, § 6.
8 Gray, 395.

121. When a poor convict has been confined in a prison or house of correction for three months, for fine and costs only, or for either of them, the jailer or master shall make a report thereof, in the county of Suffolk to the police court² of the city of Boston, and in other counties to any two justices of the peace, one of whom shall be of the quorum, or to any police court. The court or justices shall proceed to make inquiry into the truth thereof, and may require the jailer or keeper to bring the convict before them at the prison or such other convenient place near thereto as they may direct. If satisfied that the statement in the report is true, and that the convict since his conviction has not had any estate, real or personal, with which he could have paid the sum for which he is committed, and that he is held for no other cause, they shall make a certificate thereof to the sheriff, directing him to discharge the convict.

Poor convicts,
how discharged
when confined
for non-payment

122. The justices of the municipal courts, justices of police courts and trial justices, may discharge from the jails in their several counties persons confined for the non-payment of fine and

¹ This chapter of the Gen. Sts., concerning the sale of intoxicating liquors, has been repealed.

² Now the municipal court.

costs, not exceeding ten dollars, when they are of opinion that such persons are not able to pay the fine and costs, or that it is otherwise expedient; and the board of directors for public institutions of the city of Boston may in like manner discharge persons so committed to the house of industry; but no fees shall be allowed to any person for such service.

123. A person under guardianship may have the benefit of the provisions of the three preceding sections, although it appears that he has property held under guardianship, if it also appears that such property is beyond his actual control.

Persons under guardianship, how discharged, G. S. c. 180, § 9.

124. When a person is discharged under the preceding section, the commonwealth may, in an action of tort brought within one year after the discharge, recover against his guardian, if he has assets, the amount of fine and costs remaining unpaid.

Fine and costs may be recovered of guardian. Ibid. § 10.

125. The fees of the justices for discharging a convict under this chapter shall be one dollar to each justice, and for travel five cents for each mile going and returning, which shall be taxed, allowed, and paid in the same manner as other costs arising before justices of the peace in criminal cases.

Fees for discharge. Ibid. § 11.

126. Any convict who, at the legal expiration of his sentence, is in a condition, from bodily infirmity or disease, to render his removal impracticable, shall be provided for and receive such treatment, in the state prison, jail, or house of correction, as the exigency of the case may require, until he is in a condition to be removed. And the expense of such care and the treatment of any discharged convict shall be paid by the city or town where he may have a legal settlement, or, if he is a state pauper, by the commonwealth.

Convicts too sick to be removed, how to be provided for. G. S. c. 71, § 42. 1864, c. 163, § 2.

LUNATICS IN PRISON.

127. When a convict in a prison other than the state prison, or in the house of correction, appears to be insane, the physician attending the prison or house of correction shall make a report thereof to the jailer or master, who shall transmit the same in the county of Suffolk to a judge of the superior court, and in any other county to the judge of the probate court. The judge shall make inquiry into the facts therein stated, and if satisfied that such convict is insane, he may, at any time he deems necessary,

Insane persons in prison, how removed to hospital. G. S. c. 180, § 4. See St. 1864, c. 233, § 10.

G. S. c. 180, § 4. cause such prisoner to be removed to one of the state lunatic hospitals.

If sane before term expires, to be returned. 128. If a person so removed is restored to sanity before the expiration of his sentence, he shall be forthwith returned to the prison or house of correction from which he was removed, there to remain pursuant to his original sentence, computing the time of his confinement in the hospital as part of the term of his imprisonment.

BOARD OF DIRECTORS FOR PUBLIC INSTITUTIONS IN BOSTON.

Directors for public institutions to be chosen.
1857, c. 35, § 1.

Their powers and duties.

A majority a quorum.

May discharge the insane.
Ibid. § 2.

City council

129. There shall be elected by the city council of the city of Boston, by concurrent vote, twelve suitable persons, resident citizens of the said city, who shall constitute a board of directors for the houses of industry and reformation, and the lunatic hospital, within said city, and the house of correction for the county of Suffolk. The said board shall be styled "The board of directors for public institutions," and shall have all the authority and powers, and be subject to all the duties now conferred and imposed by virtue of existing statutes, respectively, upon the directors of said houses of industry and reformation and the overseers of said house of correction; together with such other powers and duties in connection with said lunatic hospital and the management of the business thereof as the said city council may, by ordinance and in conformity to the statutes of the commonwealth, provide.¹ A majority of said board of directors shall constitute a quorum for the transaction of business; and upon the election of the first board, as provided in the fourth section of this act [§ 131 of this digest], said city council shall be discharged from all obligations of statutes now existing requiring the election or appointment of directors or overseers for either of said institutions.

129. The said board of directors shall also have the same powers, as to the discharge of insane persons from confinement, as are now vested in the mayor and board of aldermen of said city.²

130. The said city council shall have power to pass such ordi

¹ See "House of Industry;" "House of Reformation" *post*; "Lunatic Hospital," *ante*.

² See "Lunatic Hospital," *ante*. p. 434.

nances, not inconsistent herewith or repugnant to other laws of this commonwealth, as to the duties and authority of said board of directors, and providing for their reasonable compensation, as it may from time to time deem expedient and necessary.

131. Said city council shall proceed, after the acceptance of this act, to elect by ballot nine citizens at large, three of whom shall be elected and hold their office for three years, three for two years, and three for one year; and these persons, together with one member from the board of aldermen and two members from the common council of said city, to be elected for one year by the said city council, shall constitute the first board of directors under this act; and thereafter, annually, the said city council shall elect in the manner aforesaid, three citizens of said city, at large, who shall hold their office in said board of directors for three years, and one member of the board of aldermen and two members of the common council of said city, who shall hold their office in said board of directors for one year. Each of the said directors, so elected under this act, shall, in addition to his said term, hold his office until another is elected in his stead; and the said city council shall have power to remove members from said board of directors, for cause shown, and to fill all vacancies which may occur in the same.

132. This act shall not go into effect unless accepted by said city council within six months from its passage, and shall take effect directly upon and after such acceptance.¹

133. All acts and parts of acts inconsistent herewith are hereby repealed.

134. The board of directors for public institutions of the city of Boston, comprising the house of correction, house of industry, house of reformation, and lunatic hospital, is hereby authorized, at its discretion, to transfer from any one of the said institutions, to any other of said institutions, any prisoner sentenced to either of the same: *provided*, the assent of the court or magistrate that committed said prisoner shall first be obtained to such removal.²

may pass ordinances.
1857, c. 35, § 3.

City council
to elect directors, and term
of office.
Ibid. § 4.

Act to be
accepted.
Ibid. § 5.

Repeal of other
laws.
Ibid. § 6.

Directors may
remove persons
from one institution to
another.
1858, c. 112.

¹ Accepted March 31, 1857.

² The powers granted by § 134 have never been exercised by the directors, as the constitutionality of the act has been seriously questioned.

ORDINANCES.¹

Board of directors for public institutions.
Sept. 17, 1869.

Manner of election.

SECTION 1. There shall be a board of directors to be styled "The board of directors for public institutions," consisting of twelve suitable persons, residents of the city of Boston, who shall have charge of the house of correction, house of industry, house of reformation, and lunatic hospital, and of such other institutions as may be placed under their direction by the city council. In the month of January, in the year eighteen hundred and seventy, and annually afterwards in said month, the city council shall elect, by concurrent vote of the two branches, one member of the board of aldermen and two members of the common council, to be members of the board of directors for public institutions, to hold office during the remainder of the municipal year in which they are elected, and until others are elected in their place, unless sooner removed.

In the month of March or April, in the year eighteen hundred and seventy, and annually thereafter in March or April, there shall be elected, by concurrent vote of the two branches of the city council, three members of the board of directors for public institutions, from the citizens at large, to hold their office for three years from the first Monday in May in the year of their election, and until others are elected in their place, unless sooner removed. The members of said board of directors shall at all times be subject to removal from office by the city

¹ An ordinance in relation to the public institutions, passed December 12, 1862, amended December 4, 1866, September 17, 1869, and June 12, 1875.

council for cause; and vacancies from any cause Sept. 17, 1860.
may be filled at any time for the unexpired term in
the same manner as the original appointment.

SECT. 2. The persons elected from the city council Organization of
the board.
shall enter upon their duties as members of said Ibid.
board of directors forthwith; and the persons elected
from the citizens at large shall enter upon their
duties on the first Monday in May. On the first
Monday in May, annually, the members shall meet
and organize themselves into a board, by the choice
of one of their number as president. They shall also
choose a clerk, who shall not be a member of the
board; and they may make such rules and regula-
tions for their own government, and for the govern-
ment of all subordinate officers by them appointed,
as they may deem expedient. A majority of the
whole board shall be necessary to constitute a
quorum for the transaction of business.

SECT. 3. The said board of directors shall have Powers and
duties of the
directors.
and exercise all the powers conferred, and be subject Dec. 12, 1862.
to all the duties imposed, by existing laws in relation
to the house of industry, house of reformation, lunatic
hospital, and the overseers of houses of correction,
and which may be conferred by this ordinance, and
by future laws and ordinances.

SECT. 4. The said board of directors shall have Directors to
have charge of
records, make
charge of all books, papers,¹ property, and things

¹ The records and files of the institutions are open to public inspection.
See title "Records," p. 659.

rules and regulations, appointments, officers.
Dec. 12, 1862.

pertaining to the aforesaid institutions, and shall make all needful rules and regulations for the government and management of the same, and employ such subordinate officers, agents, and assistants as they may deem expedient, and fix the compensation for each: *provided, however*, that the compensation of all persons employed shall be subject to the control of the city council. No rule or regulation made by said board shall take effect until it may have been approved by the city council, nor shall it remain in force after it may have been disapproved by the city council. Until new rules and regulations have been approved, those now in use at the several institutions shall remain in force.

Compensation.

Rules and regulations to be approved by city council.

Superintendent of lunatic hospital to be elected; his duties and powers.
Ibid.

SECT. 5. Annually, in the month of February, and whenever a vacancy may occur, the board shall elect some suitable physician as superintendent of the lunatic hospital, who may be removed at their pleasure, and shall receive such compensation as the city council may determine. He shall constantly reside at the hospital, and shall perform the duties of physician to such other institutions under the charge of the board as the directors may require. He shall, subject to the approval of the board, appoint assistants, subordinate officers, and attendants, and shall have charge and control of the hospital, grounds, buildings, and appurtenances, and of all patients, subordinate officers, attendants, and domestics.

Directors may make repairs, etc.

SECT. 6. The board of directors shall make all necessary repairs and alterations in the several build-

ings and make improvements in the grounds connected with the buildings under their charge, provided the expense thereof shall not exceed the amount appropriated therefor by the city council; but they shall not incur any expense for the erection or repair of structures, or for the improvement or ornament of the grounds, exceeding the appropriation therefor, without first obtaining the approval of the city council.

Dec. 12, 1862.

Expense limited.

SECT. 7. Whenever it is necessary to procure supplies, material, services, or labor for the said institutions, all due care shall be used to procure the same at the lowest market price. When the supplies or materials to be obtained exceed in value the sum of three hundred dollars, the board shall advertise in the newspapers employed by the city to publish its advertisements, for sealed proposals to furnish such supplies or materials, describing particularly the quality and quantity required, and the times and places of delivery. Such proposals as may be received shall be opened at a public meeting of the board, and the contracts shall be awarded to the lowest bidder: *provided*, the board shall deem it for the best interest of the city; and the person contracting shall furnish satisfactory security for the faithful performance of his contract. No member of the board,¹ either directly or indirectly, for himself personally, or in trust for any other person, shall have any pecuniary interest in furnishing supplies for the institutions, or in any contract for the same. The board shall, in the erection, alteration or repair of buildings, be subject to the

Supplies, how to be procured. Ibid.

June 12, 1875.

¹ See "Contracts with city officers," *ante*, p. 205.

Dec. 12, 1862.
June 12, 1875.

same provisions concerning plans, specifications and proposals to which the committee on public buildings are now subject by ordinance.

Directors shall
make quarterly
and annual re-
ports.
Dec. 12, 1862.
Dec. 4, 1866.

SECT. 8. The said board of directors shall make a report quarterly, to the city council, of their expenditures for each of the institutions, and annually, in the month of May, make a report in print, of the expenditures and receipts of each institution for the previous year, giving the condition of each institution, with the number of inmates admitted thereto and discharged therefrom, the births and deaths therein during the year, and the number remaining on the first of May, together with such other information pertaining thereto as they deem of public interest.

SALARIES OF OFFICERS AT JAIL.¹

Salaries of
officers con-
nected with jail.
Oct. 3, 1864.

Ordered, That the salaries of the several officers connected with the Suffolk county jail be determined as follows: The salary of the keeper of the jail shall be at the rate of one thousand dollars per annum; the salary of the turnkey shall be at the rate of nine hundred dollars per annum; the salary of the clerk shall be at the rate of eight hundred and fifty dollars per annum; the salary of the first officer shall be at the rate of seven hundred and fifty dollars per annum; and the salaries of the five subordinate officers shall be at such rate per annum, not exceeding seven hundred dollars each, as the committee on the jail shall from time to time determine.

¹ Order of the board of aldermen passed October 3d, 1864.

HOUSE OF INDUSTRY.

STATUTES.

1. The house of industry, formerly located in that part of the city called South Boston, was completed in 1822;¹ and by a special act of the legislature, passed February 3, 1823, the city council were authorized to choose nine directors, who "should have and exercise the like authority and power in using, regulating, and governing said house of industry as are had and exercised by overseers of the poor within this commonwealth, and may send such persons to said house and for such purposes as overseers of the poor are by law authorized to do."²

Directors of house of industry to be chosen; their powers and duties. 1822, c. 56, §§ 1, 2. See §§ 7, 9.

2. By an act passed March 5, 1827, it was further provided that the directors of the house of industry in the city of Boston should have and exercise all the powers and perform all the duties relative to paupers, and the binding out of children and other persons committed to said house of industry for support, as the overseers of the poor of the several towns in this commonwealth had and exercised in relation to paupers and the binding out of children and other persons under and by virtue of the several laws of this commonwealth; and that all acts of said directors should impose the same duties, liabilities, and obligations in all judicial tribunals, on the city of Boston aforesaid, and on the several towns and individuals of this commonwealth, as the same acts would impose if done and performed in the same manner by the overseers of the poor of the several towns in this commonwealth.

Powers and duties of the directors as to binding out children. 1826, c. 111.

3. By the act of February 3, 1823, before mentioned in section one, it was provided that the justices of the police court³ in the

Police court may commit to

¹ The house of industry was removed from South Boston to Deer island in November, 1853.

² For the general powers and duties of overseers of the poor relating to the support of paupers and the binding out of children, see "Paupers," p. 575. For their powers in the city of Boston, and their duties as a corporate body to hold and manage trust funds, see "Overseers of the Poor," p. 545. See, also, Gen. Stats. cc. 70, 111.

³ Now the municipal court.

house of industry.

1822, c. 56, § 3.

1787, c. 54, § 1.

Drunkards sent to house of industry.

1864, c. 258, § 1.

Police court further authorized to sentence to house of industry.

1860, c. 199.

Directors to make reports, rules to be approved by city council.

1822, c. 56, §§ 4, 5, 6.

Recovery of expenses for the support of paupers.

1824, c. 28, § 1.

Powers, duties, etc., transferred to new board of directors.

city of Boston should have and exercise the like authority and power, in ordering commitments to said house of industry, as were vested in justices of the peace as to commitments to houses of correction, according to the provisions of "An act for suppressing and punishing rogues, vagabonds, common beggars, and other idle, disorderly, and lewd persons," passed March 26, 1788.¹

4. It is provided by chapter 258 of the acts of 1864, that persons convicted in the city of Boston of drunkenness, or as common drunkards, and sentenced to imprisonment, shall have their sentences executed in the house of industry in said city.

5. An act passed April 4, 1860, concerning imprisonment in the county of Suffolk, provides that in all cases in which the police court² of the city of Boston is authorized to sentence to imprisonment in the house of correction or county jail, or to commitment thereto for non-payment of fine and costs, said court may instead, at their discretion, sentence to imprisonment in the house of industry for the city of Boston, or to commitment thereto.

6. The directors were required to make an annual report to the city council of the inmates and the expenses, and the rules and orders for the governing and managing the house of industry were required to be approved by the city council.

7. By an act passed June 12, 1824, it was provided that the city of Boston should be entitled to the same remedies in order to recover the expenses of supporting any poor person maintained in the house of industry of said city, that towns in this commonwealth were entitled to for the recovery of the expenses of persons for whom support or relief was provided by overseers of the poor, or under their direction.³

8. The provisions contained in the first section relating to the choice of directors for the management of the house of industry, and the provisions in section six relating to reports of

¹For the authority of the justices of the several courts to commit offenders to the house of industry, see "House of Correction and Jail," pp. 449-452.

²Now the municipal court.

³For the recovery of expense of support of paupers, see "Paupers, p. 553. In case inmates of the house of industry die, for the notice to be given and the disposition of the bodies, see "Health," *ante*, p. 398.

the directors and rules and orders, are superseded by other provisions contained in an act passed March 28, 1857,¹ whereby all the public institutions in the city of Boston, viz.: the houses of industry and reformation, the lunatic hospital, and the house of correction for the county of Suffolk, were placed under the control of one board, to be styled "The board of directors for public institutions," and to have all the authority and powers, and to be subject to all the duties, now conferred and imposed by virtue of existing statutes, respectively, upon the directors of the houses of industry and reformation, and the overseers of the house of correction, together with such other powers and duties in connection with the lunatic hospital as the city council may provide.

Their powers
and duties.

9. By an act passed May 14, 1864, the secretary of the board of state charities is required to furnish to the keeper of the house of industry, and to the directors for public institutions, blank forms for certain periodical returns such as are required of prisons and houses of correction.

Returns.
1864, c. 307.

HOUSE OF REFORMATION.

STATUTES.

1. By an act passed March 4, 1826, the city council of the city of Boston were authorized to erect a building in said city for the reception, instruction, employment, and reformation of such juvenile offenders as were named in said act; or to use for these purposes the house of industry, or correction, at South Boston, or any other house or building belonging to said city that the city council might appropriate to these uses.

City council
may erect or use
buildings in the
city for juvenile
offenders.
1825, c. 182, § 1.

2. The directors of the said house of industry, or such other

Children con-

¹ For the act of March 28, 1857, c. 35, and another act relating to the public institutions passed March 27, 1858, c. 112, see "House of Correction and Jail," p. 474, §§ 129-134.

For the ordinance of the city relating to the public institutions, see "House of Correction and Jail," *ante*, p. 476.

For matters relating to the house of reformation and lunatic hospital, see "House of Reformation," p. 483, and "Lunatic Hospital," *ante*, p. 434.

victed of criminal offences may be received by directors.
1825, c. 182, § 2.

Directors to be notified and assent.

Children leading an idle or dissolute life, etc., may be sentenced to house of reformation.
Ibid. § 3.

persons as said city council shall appoint directors of said house for the employment and reformation of juvenile offenders,¹ shall have power, at their discretion, to receive and take into said house all such children who shall be convicted of criminal offences, or taken up and committed under and by virtue of an act of this commonwealth "for suppressing and punishing of rogues, vagabonds, common beggars and other idle, disorderly, and lewd persons,"² and who may, in the judgment of any justice of the supreme judicial court, sitting within and for the county of Suffolk, or of the judge of the municipal court³ of the city of Boston, or of any justice of the police court⁴ within and for the city of Boston, be proper objects therefor; and upon the conviction or commitment aforesaid of any child, in the judgment of such judge or justice a proper object for the said house of employment and reformation, the said judge or justice, previously to declaring the sentence of the law on such child, shall cause notice to be given to the directors of the said house; and in case the said directors shall declare their assent to the admission of such child into said house, the said judge or justice shall sentence him or her to be committed to said house of employment and reformation, subject to the control of the directors thereof, in conformity with the provisions of the succeeding sections.

3. Any justice or judge of either of the said courts respectively, on the application of the mayor, or of any alderman of the city of Boston, or of any director of the house of industry, or house of reformation, or of any overseer of the poor of said city, shall have power to sentence to said house of employment and reformation all children who live an idle or dissolute life, whose parents are dead; or, if living, from drunkenness or other vices neglect to provide any suitable employment or exercise any salutary control over said

¹ The powers granted in § 2 are now vested in the board of directors for public institutions.

² The act here cited, that is, Stat. 1787, c. 54, was repealed by Stat. 1834, c. 151, § 22, and the latter statute was itself repealed by the Revised Statutes. Most of the provisions of the former in relation to the punishment of the class of offences named therein were incorporated into Rev. Sts. c. 143, § 5, and subsequently into the General Statutes, adopted in 1859. See "House of Correction and Jail," p. 449.

³ Now the superior court for the transaction of criminal business.

⁴ Now the municipal court.

children. And the persons thus committed shall be kept, governed, and disposed of as hereinafter provided, the males till they are of the age of twenty-one years, and the females of eighteen years.¹

1825, c. 182, § 3.
To be kept, etc.,
till of age.
See § 9.

4. The directors of said house of industry, or such other persons as said city council shall appoint directors of the institution, authorized by the first section, may receive the persons sentenced and committed as aforesaid into said institution; and they shall have power to place the persons committed to their care—the males until they arrive at the age of twenty-one years, and the females until they arrive at the age of eighteen years—at such employments, and to cause them to be instructed in such branches of useful knowledge as shall be suitable to their years and capacity; and they shall have power to bind out said minors as apprentices or servants, until they arrive at the ages aforesaid, to such persons, and at such places, to learn such arts, trades, and employments, as in their judgment will be most for the reformation, amendment, and future benefit and advantage of such minors. And the provisions of an act entitled “An act providing for the relief and support, employment and removal, of the poor, and for repealing all former laws made for these purposes,” passed the twenty-sixth day of February, in the year of our Lord one thousand seven hundred and ninety-four, contained in the fourth, fifth, and sixth sections thereof, so far as they relate to binding out children as servants or apprentices, are adopted as a part hereof; and the said directors shall have all the powers, and be subject to all the duties of the overseers of the poor, as set forth in the sections aforesaid of the act aforesaid; and the master or mistress, servant and apprentice, bound out as aforesaid, shall have all the rights and privileges, and be subject to all the duties, set forth in the sections aforesaid of the act aforesaid.²

Directors to employ and instruct children.
Ibid. § 4.

Shall have power to bind out.

1793, c. 59, §§ 4, 5, 6.

To have powers, etc., of the overseers of the poor.

5. Whenever said directors, overseers, or managers shall deem Court may dis-

¹ All of this section, except the last sentence, was substantially re-enacted by Stat. 1847, c. 208, § 1. See *post*, § 8.

² The sections of the act referred to (Stat. 1793, c. 59) were repealed by the Rev. Sts. c. 180, and these were repealed by the Gen. Sts. c. 111. For the authority of overseers of the poor to bind out children, etc., see “Overseers of the Poor” and “Paupers,” *post*, p. 575.

charge, on recommendation of directors.

1825, c. 182, § 5.

it expedient to discharge any minor committed to their charge as aforesaid, and not bound out as a servant or apprentice, and shall recommend the same in writing to the court by whom such minor was committed, said court shall have power to discharge him or her from the imprisonment or custody aforesaid.

Separate branch for females may be established.

1843, c. 22, § 1.

6. The city of Boston is authorized to establish, in any building or buildings, or part of any building, used by said city as a house of industry, or for any other purpose, a separate branch or branches of said house of reformation and employment for females, or for the separate classification of such females.

Appeal from judgment of the police court, under the second section, to the municipal court.

1829, c. 18.

7. Any party aggrieved by the sentence of the police court,¹ or any justice thereof, passed pursuant to the second section, may appeal from such sentence to the next municipal court² in the said city, whose judgment shall be final, as in other cases of appeals from the judgment of justices of the peace to the courts of common pleas in criminal cases, the party appealing recognizing with sufficient surety or sureties, to the satisfaction of the justices of the police court,¹ by whom the sentence is passed, to enter and prosecute such appeal, and in the mean time to keep the peace, and be of good behavior.

Children leading an idle or dissolute life, etc., may be sentenced to house of reformation.

1847, c. 208, § 1.

8. The municipal² or police court¹ of said city, upon the complaint, under oath, of the mayor or any alderman thereof, or of any of the directors of the house of industry, or of the said house of reformation and employment, or of the overseers of the poor of the said city, that any minor, under the age of sixteen years, lives an idle and dissolute life, that his parents are dead, or, if living, do from vice or any other cause neglect to provide suitable employment for, or to exercise salutary control over, such minor, shall have power, upon conviction thereof, to sentence such minor to such house of reformation and employment, to be kept and governed according to law.

Commitment of truant children.

1873, c. 262.

9. By an act passed May 2, 1873, it was provided that any minor convicted of being an habitual truant, or any child convicted of wandering about in the streets or public places of any city or town, having no lawful occupation or business, not attend-

¹ Now the municipal court.

² Now the superior court for the transaction of criminal business.

ing school, and growing up in ignorance, between the ages of seven and fifteen years, should be committed to any institution of instruction or suitable situation provided for the purpose, for such time, not exceeding two years, as the justice or court having jurisdiction might determine.¹

10. By an act passed May 9, 1865, it is provided that in the county of Suffolk, the board of directors for public institutions shall have like authority with the county commissioners of other counties to discharge persons from the house of employment and reformation for juvenile offenders, established in the city of Boston.

1873, c. 262.
Directors for public institutions may discharge inmates. 1865, c. 208, § 4.

11. By an act passed May 29, 1866, each of the several cities and towns in this commonwealth was authorized and empowered to make all needful provisions and arrangements concerning children under sixteen years of age, who, by reason of the neglect, crime, drunkenness or other vices of parents, or from orphanage, are suffered to be growing up without salutary parental control and education, or in circumstances exposing them to lead idle and dissolute lives; and may also make all such by-laws and ordinances respecting such children as shall be deemed most conducive to their welfare and the good order of such city or town: *provided*, that said by-laws and ordinances shall be approved by the superior court, or in vacation by a justice thereof, and shall not be repugnant to the laws of the commonwealth.

Towns may make provisions for care, etc., of neglected children under age of sixteen years. 1866, c. 283, § 1. 1867, c. 2.

12. The mayor and aldermen of cities and the selectmen of towns availing themselves of the provisions of this act, shall severally appoint suitable persons to make complaints in case of violations of such ordinances or by-laws as may be adopted, who alone shall be authorized to make complaints under the authority of this act.

May appoint persons to make complaints. Ibid. § 2.

13. When it shall be proved to any judge of the superior court, or judge or justice of a municipal or police court, or to any trial justice, that any child under sixteen years of age, by reason of orphanage, or of the neglect, crime, drunkenness, or other vice of parents, is growing up without education or salutary control, and in circumstances exposing said child to an idle and dissolute life, any judge or justice aforesaid shall have power to order said child to such institution of instruction or other place that may be

Children under sixteen years old, growing up without education, etc., may be committed to institutions, etc. Ibid. § 3.

¹For provisions in relation to truants and absentees from school, see "Schools," *post*, p. 685.

1866, c. 233, § 3. assigned for the purpose, as provided in this act, by the authorities of the city or town in which such child may reside, for such term of time as said judge or justice may deem expedient, not extending beyond the age of twenty-one years for males, or eighteen years for females, to be there kept, educated and cared for according to law.

Children may be discharged when parents or others can or will properly take care of them.
Ibid. § 4.

14. Whenever it shall be satisfactorily proved that the parents of any child committed under the provisions of this act shall have reformed and are leading orderly and industrious lives, and are in a condition to exercise salutary parental control over their children and to provide them with proper education and employment; or, whenever said parents being dead, any person may offer to make suitable provision for the care, nurture and education of such child as will conduce to the public welfare, and will give satisfactory security for the performance of the same, then the directors, trustees, overseers, or other board having charge of the institution to which such child may be committed, may discharge said child to the parents or to the party making provision for the care of the child as aforesaid.

ORDINANCE.¹

Directors of house of industry appointed directors of house of reformation.
House of reformation united with Boylston asylum.
June 23, 1841.

SECTION 1. The directors of the house of industry are hereby appointed directors of the house of reformation, with authority to take such steps as may be necessary to unite the same with the Boylston asylum, now under their charge, and henceforward to use the building for the new institution, which shall be called the Boylston school and house of reformation,² but shall be a part of the house of

¹ Orders relating to the house of reformation, passed June 28, 1841, and an ordinance passed June 5, 1861.

² The house of reformation was originally established in 1826, in a portion of the building in South Boston then occupied as a house of correction. In 1836 a separate building was erected, not far from the house of correction, for the inmates, where they remained until July 1, 1858, when they were transferred to Deer island, excepting those who were supported from the

industry; and it is hereby declared to be also the institution for the reception, instruction, employment, and reformation of juvenile offenders, under the act passed March 4, 1826. June 28, 1841.

SECT. 2. The said directors shall have all the rights and powers of the directors of the house of reformation, as to all children who have been heretofore indentured from the said house, and as to protecting their rights and superintending the welfare of said children, and enforcing the provisions of said indentures. Rights and powers of directors. Ibid.

SECT. 3. Agreeably to section one, chapter twenty-two of the acts of eighteen hundred and forty-three,¹ a separate branch of the house of reformation for females is hereby established in the building at Deer island, now used as a house of industry and for other A branch for females established. June 5, 1861.

Boylston fund, and who were under the management of the overseers of the poor, in accordance with the act of 1802, c. 44, by which act the said overseers, with others, were incorporated as a body politic to hold and dispose of "the bequests, devises, and donations made and granted by John Boylston." See "Overseers of the Poor," p. 547. The house of reformation was under the care of the directors of the house of industry until 1833, when a separate board was chosen. In 1841 a committee was appointed, of which Mr. Chapman, the mayor, was chairman, with "instructions to consider the whole subject of the house of reformation, and whether any change is expedient in the law establishing said institution, and to report by ordinance or otherwise." This committee reported, among other things, that it was expedient to place this institution under the charge of the directors of the house of industry; and they reported two orders to that effect, which were adopted June 28, 1841, as above. See "City Documents" of 1841, Nos. 6 and 14. See, also, "City Records," vol. iv. pp. 24, 46, 52, 112 (b), 148, 149, 200, 223, 333; vol. x. pp. 145, 147, 480; vol. xi. pp. 127, 149, 250, 324; vol. xii. p. 283; vol. xix. p. 167.

¹ See the act, *ante*, p. 486, § 6.

June 5, 1861.

purposes, and the board of directors for public institutions are hereby authorized and empowered to provide accommodations for, and to make all needful and proper regulations concerning, the same, subject to the approval of the city council.¹

NEGLECTED CHILDREN.²

Almshouse at Deer island assigned as place for neglected children.

May 23, 1873.

SECT. 4. The almshouse at Deer island is hereby assigned and provided as the place to which children under sixteen years of age, living in the city of Boston, in the condition described in chapter two hundred and eighty-three of the acts of the year eighteen hundred and sixty-six, may be sent by any of the judges of the superior or municipal courts, upon the complaint of any of the officers appointed by the mayor and aldermen, under the second section of said chapter two hundred and eighty-three, and the board of directors for public institutions shall have and exercise the same control over the children sent to said institutions, as herein provided, that they have and exercise over children sentenced and committed under the provisions of chapter one hundred and eighty-two of the acts of the year eighteen hundred and twenty-five.

¹ An ordinance passed May 9, 1860, providing for a branch for girls in the house of reformation, was repealed June 5, 1861.

² An ordinance providing for the care and education of neglected children, passed May 23, 1873. Approved by the superior court, May 23, 1873.

INTELLIGENCE OFFICES.

STATUTES.

1. Whoever, without a license therefor, establishes or keeps an intelligence office for the purpose of obtaining or giving information concerning places of employment for domestics, servants, or other laborers, except seamen, or for the purpose of procuring or giving information concerning such persons for, or to, employers, or for the purpose of procuring or giving information concerning employment in business, shall pay a fine of ten dollars for each day such office is so kept.

Intelligence office, penalty for keeping without license.
G. S. c. 88, § 23.
1872, c. 237.

2. The mayor and aldermen, or selectmen, of any city or town may, for the purposes mentioned in the preceding section, grant licenses to suitable persons for the term of one year, and may revoke the same at pleasure. They shall receive one dollar for each license so granted.

Aldermen, etc., may license, etc.
Ibid. § 24.

3. Licenses granted to keepers of intelligence offices, dealers in junk, old metals and second-hand articles, pawnbrokers and keepers of billiard-saloons and bowling-alleys, under chapter eighty-eight of the General Statutes, shall be signed by the clerk of the city or town in which they are granted, and every such license shall be recorded by such clerk in a book kept for that purpose before being delivered to the licensee; such license shall set forth the name of the person licensed, the nature of the business, and the building or place in such city or town in which it is to be carried on, and shall continue in force until the first day of May next ensuing, unless sooner revoked, as provided in said chapter. The clerk issuing any such license shall be entitled to receive for the use of the city or town for each license the sum of two dollars.

Certain licenses to be signed by city or town clerk, and recorded.
1876, c. 147, § 1.

To set forth what.

Fee for license.

4. Such licenses may be granted at any time during the month of April, to take effect on the first day of May then next ensuing, and after the first day of May they may be granted for the remainder of the year ending on the first day of the following May.

Licenses when to be granted, and when to expire.
Ibid. § 2.

5. No license issued as aforesaid shall be valid to protect the licensee in any building or place other than that designated in

Business licensed to be done only at

place designated in license. 1873, c. 147, § 3. and the license, unless consent to removal be granted by the mayor and aldermen or selectmen.

Revocation of license. Ibid. § 4. 6. Whenever any such license shall be revoked, the clerk of such city or town shall note such revocation upon the face of the record of the license, and shall give written notice of such revocation to the holder of the license; said notice to be delivered to him in person, or left at the place of business designated in the license.

Notice, and how served.

RULES AND REGULATIONS.¹

Applications for license, how made. Aug. 3, 1863.

SECTION 1. All persons making applications for licenses shall state in their petitions the place which they propose to occupy; and no person licensed shall occupy any other place, without leave first obtained of the board of aldermen.

Hours offices may be kept open. Ibid.

SECT. 2. The intelligence offices may be kept open for business between the hours of eight o'clock in the morning and eight o'clock in the evening, Sundays excepted, and at no other hours.

Signs to be put up. Ibid.

SECT. 3. All persons, licensed as aforesaid, shall place in some conspicuous place on the premises occupied by them, a sign, with their names, and the word "licensed," thereon; and shall produce their license on the demand of any person doing business with them.

Records to be kept. Ibid.

SECT. 4. They shall keep a book, in which shall be entered, at the time of application, the name and residence of any person who may apply for employ-

¹ Rules and regulations passed by board of aldermen, August 3, 1863; amended September 26, 1864, and September 4, 1866; additional rules adopted March 21, 1870.

ment, and the name and residence of any person who Aug. 3, 1863.
 may make application to be supplied with male or
 female domestics, servants, clerks, or other laborers,
 and also any and all sums of money which may be
 received of any persons for such services; and such
 books shall at all times be open to the inspection of
 the mayor, or either of the aldermen, or any person
 by them authorized.

SECT. 5. Every licensed keeper of an intelligence Fees.
 office shall be entitled to receive of each female, at the Sept. 26, 1864.
 time of application for a place, a sum not exceeding Sept. 4, 1866.
 fifty cents, and of each male, who may make such
 application, a sum not exceeding one dollar; and of
 each person making application for a female servant,
 a sum not exceeding fifty cents, and for a male
 servant a sum not exceeding one dollar; for which
 a receipt shall be given at the time; and in case no
 servant, or place of employment, is obtained within
 six days from the date of payment, the money shall
 be refunded, except as follows: If any servant be
 sent to a situation, and make an engagement, and go
 to work, and for any reason does not remain at the
 place, neither party shall be entitled to have the pay
 returned.

SECT. 6. On the first Monday of February, annu- Appointment of
 ally, or within sixty days thereafter, there shall be superintendent.
 appointed by the mayor, by and with the advice and Mar. 21, 1870.
 consent of the board of aldermen, a suitable person,
 with police powers, as superintendent of intelligence
 offices.

Duties and
powers.
Mar. 21, 1870.

SECT. 7. Said superintendent shall devote his whole time to the business of the department. Under the direction of the committee on licenses, he shall have the general supervision of all matters appertaining to the license of intelligence offices. He shall keep a book, in which he shall register, alphabetically, the names of all persons licensed to keep intelligence or employment offices, together with the name and number of the street, and the portion of the building which they occupy. And he shall see that each person licensed is furnished with a copy of the statutes and the rules and regulations of the board of aldermen relating to the establishment and keeping of intelligence offices. He shall see that all persons licensed keep the requisite books, and in all things conform to the requirements of the statutes, and rules and regulations.

To make com-
plaints.
Ibid.

SECT. 8. In all cases where persons establish or keep intelligence offices without license, the superintendent shall cause such persons, under the direction of the committee on licenses, to be complained against, and shall attend to their prosecution.

To report to
committee
on licenses.
Ibid.

SECT. 9. Said superintendent shall report from time to time to the committee on licenses, and shall obtain such information in relation to the manner in which the business of the intelligence offices is performed as the committee on licenses may require.

Office hours.
Ibid.

SECT. 10. Said superintendent shall be at his office from 9 to 10 A.M., and from 2 to 3 P.M., each day, for the transaction of business connected with his department.

SECT. 11. Any person licensed to keep an intelligence office, who violates any of the provisions of the preceding sections, or any other rules and regulations that may be hereafter passed by the board of aldermen, shall be liable to have his license revoked: *provided, however*, that any license may at any time be revoked for any cause other than those above specified.

License may be
revoked.
Aug. 8, 1863.

JURORS.¹

QUALIFICATION AND EXEMPTION.

1. All persons who are qualified to vote in the choice of representatives in the general court shall be liable to be drawn and serve as jurors, except as is hereinafter provided.

Qualifications of
jurors.
G. S. c. 132, § 1.
9 Mass. 107.

2. The following persons shall be exempt from serving as jurors, to wit: —

Persons abso-
lutely exempt.
G. S. c. 132, § 2.
1864, c. 215.
16 Pick. 153.
19 Pick. 368.
20 Pick. 1.

The governor, lieutenant-governor, members of the council, secretary of the commonwealth, members and officers of the senate and house of representatives during the session of the general court, judges and justices of any court (except justices of the peace), county and special commissioners, clerks of courts, registers of probate and insolvency, registers of deeds, sheriffs and their deputies, coroners, constables, marshals of the United States and their deputies, and all other officers of the United States, counsellors, and attorneys at law, settled ministers of the gospel, officers of colleges, preceptors and teachers of incorporated academies, practising physicians and surgeons regularly licensed, cashiers of incorporated banks, the superintendents, officers and assistants employed in or about either of the state hospitals, state almshouses, jails, lunatic hospitals, houses of correction, houses of industry, reform schools, or the state prison, keepers of light-houses, conductors and engine drivers of railroad trains, teachers

¹ A county is not chargeable in a trustee process for compensation due to a juror and ordered to be paid from a county treasury. 9 Allen, 570.

G. S. c. 132, § 2. in public schools, constant ferrymen, persons who are more than sixty-five years old, members of the volunteer militia, members of the ancient and honorable artillery company, and enginemen and members of the fire department of the city of Boston; and enginemen and members of the fire department of other places may be exempt by the vote of the city council of the city or the inhabitants of the town.

To serve but once in three years.
Ibid. § 3.
16 Mass. 220.
8 Pick. 54.
14 Pick. 196.

Not to serve as traverse juror more than thirty days at a term.
1873, c. 44.

Jurors before justices of peace and police courts, when exempt, etc.
G. S. c. 132, § 5.

3. No person shall be liable to be drawn and serve as a juror in any court oftener than once in three years, except as provided in section five; but he shall not be so exempt unless he actually attends and serves as a juror in pursuance of the draft.

4. No person shall serve as a traverse juror in the county of Suffolk more than thirty days at any term of court, unless for the purpose of finishing a case commenced within that time.

5. No person shall be exempt from serving on a jury in any other court, in consequence of his having served before a justice of the peace or police court. No person shall be compelled to serve as a juror before any justice of the peace, or police court more than twenty-four days in any one year, nor more than fourteen days at any one time, except to finish a case commenced within that time.

JURY-LIST AND BOX.

Selectmen to prepare lists of persons qualified.
Ibid. § 6.
7 Met. 326.

6. The selectmen of each town shall, once in every year, prepare a list of such inhabitants of the town not absolutely exempt, as they think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions; which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census, except that in the county of Dukes County it may include one for every thirty inhabitants.

List to be posted up and approved or altered by town.
G. S. c. 132, § 7.
7 Met. 326.

7. The list when so prepared shall be posted up by the selectmen in public places in the town, ten days at least before it is submitted for revision and acceptance, and shall then be laid before the town; and the town may alter it by adding the names of any persons liable to serve, or striking any names therefrom.¹

Names to be put into a box.

8. The selectmen shall cause the names borne on the list to be

¹ See special provisions for cities in §§ 19, 20.

written, each on a separate paper or ballot, and shall roll up or fold the ballots so as to resemble each other as much as possible, and so that the name written thereon shall not be visible on the outside; and they shall place the ballots in a box to be kept by the town-clerk for that purpose. G. S. c. 132, § 8.

9. If any person whose name is so placed in the jury-box is convicted of any scandalous crime, or is guilty of any gross immorality, his name shall be withdrawn therefrom by the selectmen, and he shall not be returned to serve as a juror. Name of person convicted of any scandalous crime, etc., to be withdrawn, etc.
Ibid. § 9.

VENIRES FOR JURORS.

10. The clerks of the supreme judicial and superior courts, in due season before each term (except the terms of the superior court in the county of Suffolk for criminal business, commencing at other times than in January, April, July, and October), and at such other times as the respective courts may order, shall issue writs of *venire facias* for jurors, and shall therein require the attendance of the jurors on such day of the term as the court may order. The jurors returned for the superior court for criminal business in the county of Suffolk shall serve three terms. Clerks to issue writs of *venire facias*.
Ibid. § 10.
See §§ 22, 23.

11. The clerks in issuing the *venires* shall require from each town and city a number of jurors as nearly as may be in proportion to their respective number of inhabitants, so as to equalize, as far as possible, the duty of serving as jurors. Jurors to be apportioned.
G. S. c. 132, § 11.

12. The *venires* shall be delivered to the sheriff of the county, and by him transmitted to a constable in each of the towns and cities to which they are respectively issued, and they shall be served by the constable, without delay, on the selectmen and town-clerk. *Venires*, how served.
Ibid. § 12.

13. Nothing contained in the preceding sections shall prevent any court from issuing *venires* for additional jurors in term time whenever it is necessary for the convenient despatch of their business; in which case the *venires* shall be served and returned, and the jurors required to attend, on such days as the court shall direct. Additional *venires* may be issued in term time.
Ibid. § 13.

DRAWING AND SUMMONING JURORS.

14. All jurors, whether required to serve on a grand or traverse jury, by force of the laws relating to highways or mills, or on any Jurors selected by drawing names.

G. S. c. 132, § 15. other occasion (except inquests and proceedings relating to the commitment of insane persons), shall be selected by drawing ballots from the jury-box, and the persons whose names are borne on the ballots so drawn shall be returned to serve as jurors.

Names, when and how to be drawn.

Ibid. § 16.

15. When jurors are to be so drawn, the town-clerk and selectmen shall attend at the clerk's office, or some other public place appointed for the purpose, and, if the clerk is absent, the selectmen may proceed without him. The ballots in the jury-box shall be shaken and mixed together, and one of the selectmen, without seeing the names written thereon, shall openly draw therefrom a number of ballots equal to the number of jurors required. If a person so drawn is exempt by law, or is unable by reason of sickness or absence from home to attend as a juror, or if he has served as a juror in any court within three years then next preceding, his name shall be returned into the box and another drawn in his stead.

Date of each draft to be indorsed on ballots.

Ibid. § 17.

16. When a person is drawn and returned to serve as a juror in any court, the selectmen shall indorse on the ballot the date of the draft and return it into the box, and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts made within three years then next preceding.

Meetings for drawing jurors, when held.

Ibid. § 18.

17. The meeting for drawing jurors, whether the draft is made in town-meeting or before the selectmen and town-clerk only, shall be held not less than seven, nor more than twenty-one days before the day when the jurors are required to attend.

Summoning jurors and returning *venire*.

Ibid. § 20.

13 Met. 325.

18. The constable¹ shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the *venire*, with the indorsement thereon, of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn and of the time and place of the sitting of the court at which he is to attend, and shall make a return of the *venire*, with his doings thereon, to the clerk, before the opening of the court from which it was issued.

¹ It is not necessary that notice to jurors, who are drawn to assess damages caused by the laying out of a highway or railroad, should be served by a constable. It may be served by the officer to whom the warrant for summoning is directed. 13 Met. 316.

SPECIAL PROVISIONS FOR CITIES.

19. The list of jurors in the city of Boston shall be prepared, in the manner prescribed by law, once in each year in the months of January and February, by the board of registrars of voters in said city, who shall post the same in two public places for a period of at least ten days, and shall thereafter submit the same to the board of aldermen of said city, who shall have power to revise and accept it according to law, and after such revision and acceptance shall proceed in the manner prescribed for selectmen of towns by section eight of chapter one hundred and thirty-two of the General Statutes [§ 8 of the foregoing], and shall place the ballots in a box to be kept by the city-clerk for the purpose.

List of jurors to be prepared by registrars of voters, posted publicly for ten days, and then submitted to board of aldermen.
1876, c. 207.

20. The mayor and aldermen, and the clerks of each city, shall severally have and exercise all the powers and duties with regard to drawing, and all other matters relating to jurors therein, which are in this chapter required to be performed by the selectmen and town-clerks in their respective towns, and all the *venires* for jurors to be returned from cities shall be served on the mayor and aldermen.

Drawing jurors, etc., in cities.
G. S. c. 132, § 22.

21. In indictments any penal actions for the recovery of any sum of money, or other thing forfeited, it shall not be a cause of challenge to a juror that he is liable to pay taxes in any county, city, or town which may be benefited by such recovery.

When interest not to disqualify.
Ibid. § 30.
5 Mass. 90.
3 Pick. 462.
9 Met. 576.
1 Gray, 472.
See G. S. c. 122, § 13.

GRAND JURIES.¹

22. The clerk of the superior court for criminal business, not less than seven, nor more than fourteen days before each term commencing on the first Mondays of January and July, shall issue writs of *venire facias* for twenty-three grand jurors to serve in said court, twenty-two of whom shall be drawn and returned from the city of Boston, and one from Chelsea, Revere, or Winthrop, who shall be held to serve for each term thereof for six months, and until another grand jury is empanelled in their stead.

Grand jurors in Suffolk, when drawn, etc.,
G. S. c. 171, § 2.
See 1860, c. 143.

23. Grand jurors shall be drawn, summoned, and returned in the

How drawn, summoned, etc.

¹ The act of 1860, c. 143, provided that Gen. St. c. 171, § 2 (in the text, § 22), should apply exclusively to the county of Suffolk.

G. S. c. 117, § 3. same manner as jurors for trials ; and when drawn at the same time with jurors for trials, the persons whose names are first drawn, to the number required, shall be returned as grand jurors, and those afterwards drawn shall be jurors for trials.

Deficiency in
grand jury.
Ibid. § 4.

24. In case of deficiency of grand jurors in any court, writs of *venire facias* may be issued to the constables of such cities or towns as the court may direct, to return forthwith such further number of grand jurors as may be required.

PENALTIES, ETC.

Fines on jurors
neglecting to
attend.

G. S. c. 132, § 36.

25. If a person duly drawn and summoned to attend as a juror in any court neglects to attend without sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court to which the juror was summoned, and shall be paid into the county treasury.

Fines on officers
and others for
neglect.
Ibid. § 37.

26. When, by neglect of any of the duties required in this chapter to be performed by any of the officers or persons herein mentioned, the jurors to be returned from any place are not duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court to the use of the county in which the offence is committed.

Same, in cases
of highways,
mills, etc.
Ibid. § 38.

27. If such neglect occurs with regard to jurors required to serve on any other occasion than in the supreme judicial court, the superior court, or before any justice of the peace or police court, the sheriff, or other officer before whom the jurors were required to appear, shall make known the fact to the superior court, next to be held in the same county ; and the court, after due examination and a hearing of the parties who are charged, shall impose the fine.

Punishment for
fraud in dra-
wing jurors.
Ibid. § 39.

28. If any city or town clerk, selectman, mayor, or alderman, is guilty of fraud, either by practising on the jury-box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out, and drawing and substituting another in his stead, or in any other way in the drawing of jurors, he shall be punished by a fine not exceeding five hundred dollars.

29. Nothing contained in the foregoing sections shall affect the power and duty of coroners or magistrates to summon and empanel jurors when authorized by other provisions of law.

Special juries
not affected
G. S. c. 132, § 40.

30. It is provided by the General Statutes that juries for the assessment of damages in laying out, altering, etc., of highways, shall be summoned by a warrant directed to the sheriff of the county, or his deputy, who is disinterested, or to a coroner, as the commissioners shall order, requiring him to summon a jury of twelve men to hear and determine the matter of complaint set forth in petition, and to decide all such matters as shall legally come before them on the hearing.

Warrant for
jury, etc., in
cases of high
ways.
G. S. c. 43, § 27;
c. 41, §§ 19, 20.
11 Pick. 263.
3 Cush. 59.
4 Cush. 291.

31. The officer who receives the warrant shall, in writing, require of the selectmen of the three nearest towns not interested in the question, if there be so many in the county, to return a number of jurors, not less than two, nor more than six, from any one town, unless in case of necessity; and the jurors shall be drawn, summoned and returned as in other cases, except that the jurors need not be summoned more than twenty-four hours before the time appointed for their attendance.¹

Jury, how and
when sum-
moned.
G. S. c. 43, § 28;
c. 44, §§ 19, 20.
13 Met. 316.
4 Cush. 291.

LAMPS.²

STATUTES.

1. It shall be lawful for the mayor and aldermen of the city of Boston for the time being to cause to be set up and affixed such and so many lamps in the streets and other places in the said city, for the purpose of lighting the same, as they may determine to be convenient and necessary. And the said mayor and aldermen are empowered to make all necessary contracts, rules, orders and regulations respecting the said lamps, and the lighting and keeping the same in repair, and the regulation and preservation of the same, as they may deem most for the benefit of said city.

Board of alder-
men empowered
to set up lamps,
and make rules
respecting the
same.
1825, c. 3, § 1.
See charter, § 33.
16 Pick. 541.
106 Mass. 276.
110 Mass. 520.

¹ For statutes relating to special juries, see Gen. Sts. c. 61, § 4; c. 73, § 12; c. 74, § 5; c. 87, § 2; c. 88, § 36; c. 120, §§ 17, 18; c. 149, § 13. St. 1862, c. 223, § 6.

² Not to light highways is not negligence on the part of a city or town. 106 Mass. 276.

Penalties for wilfully breaking or injuring the same, etc. 1825, c. 3, § 2.

2. Whoever shall wilfully, maliciously, carelessly, or wantonly break, throw down, extinguish, or otherwise injure any of the said lamps, or the posts, irons, or other furniture to the same belonging, shall, upon conviction thereof, forfeit and pay a sum not less than ten dollars, nor more than thirty dollars, for each lamp so broken or injured, and the like sum for each post or the iron or other furniture so broken or damaged, and costs of prosecution; which fines and forfeitures shall inure, the one moiety thereof to the use of the commonwealth, and the other moiety to the use of the person who shall prosecute for the same.¹

Penalty for the same, under the General Statutes. G. S. c. 161, § 66.

3. Whoever wilfully or maliciously extinguishes any lamp, or breaks, destroys or removes any lamp, or any lamp-post, or railing or posts, erected on any bridge, sidewalk, street, highway, court, or passage, shall be punished by imprisonment in the jail not exceeding six months, or by fine not exceeding fifty dollars.

ORDINANCE.²

Superintendent of lamps, how appointed. Oct. 26, 1869.

SECTION 1. On the first Monday of February, annually, or within sixty days thereafter, the mayor shall appoint, subject to the confirmation of the board of aldermen, a superintendent of lamps, who shall hold his office for one year from the first Monday of April in the year in which he is appointed, and until his successor is chosen and qualified, or he is removed. He may be removed at the pleasure of the mayor, and a vacancy may be filled at any time for the unexpired term. He shall receive such compensation for his

¹ The St. of 1825, c. 3, provided for the same penalties mentioned in St. 1823, c. 113, to be recovered and appropriated in the same manner. The statute last mentioned was repealed by the Revised Statutes. The third section of St. 1825, c. 3, repealed an old act passed June 29, 1773; see "Special Laws," vol. iii., "Appendix," p. 27.

² An ordinance to establish the office of superintendent of lamps, passed October 26, 1869.

For ordinance respecting the obstruction of street lamps by awnings, shades, signs, etc., see "Streets," *post*, p. 778.

services as the city council may from time to time Oct. 26, 1869. determine.

SECT. 2. The superintendent of lamps shall perform such services in connection with the lamp department as the mayor, or the board of aldermen, or any committee thereof, or the city council by ordinance, may direct. On or before the tenth day of January, annually, he shall make a report to the city council, containing a general statement of the expenses of his department during the preceding year, a particular statement of the property under his charge belonging to the city, and such other information as he may deem proper.

Duties of superintendent. Shall report to city council annually. Ibid.

SECT. 3. The said superintendent of lamps shall give a bond, in the penal sum of five thousand dollars, with one or more sureties satisfactory to the board of aldermen, with condition that he shall faithfully perform all the duties of his office, and that he will not, either directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement connected with the lamp department.

The superintendent shall give a bond for faithful discharge of duties, etc. Ibid.

LANDS.

ORDINANCE.¹

SECTION 1. In the month of January of each year, there shall be appointed a joint committee of the city

Committee on public lands. May 3, 1864.

¹ An ordinance in relation to the public lands, passed May 3, 1864.

May 3, 1864.

council, to be called the committee on public lands, consisting of such numbers from each board as the city council may from time to time order.

To have charge
of city lands.
Ibid.

SECT. 2. The committee shall have the care and management of the public lands belonging to the city, so far as relates to the improvement, sale, and disposal of the same, subject to the approval of the mayor, and subject also to the limitations mentioned in this and other ordinances of the city, and to such rules, orders, and regulations as the city council may from time to time adopt.

To lay out
streets and con-
struct sewers.
Ibid.

SECT. 3. The said committee are authorized to lay out and make such streets, passageways, and squares, on the public lands, to lay such sewers therein, and to make such alterations in the lots, as they may deem expedient, subject to the approval of the board of aldermen.

Superintendent
of public lands,
how chosen.
Ibid.

SECT. 4. There shall be elected annually, on the first Monday in February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a superintendent of public lands, who shall hold his office for one year from the first Monday in April in the year in which he is elected, and until a successor is elected or he is removed. He may be removed at the pleasure of the city council, and shall receive such compensation as the said council may from time to time determine.

SECT. 5. The superintendent, before entering on the duties of his office, shall give bond, with one or more sureties, to the approbation of the board of aldermen, with condition that he will not, while holding said office, directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement made in pursuance of this ordinance.

Superintendent
to give bonds.
May 3, 1864.

SECT. 6. The superintendent shall devote himself to the care, improvement, and sale of the public lands, and, under the direction of the said committee, shall cause them to be surveyed and laid out into convenient lots, and contract for the sale thereof, and sell or lease the same, at public or private sale.

Superintendent
to have over-
sight of public
lands and pre-
pare them for
sale. Excep-
tions.
Ibid.

But this and the second and third sections shall not apply to the common, the public garden, the public squares, the lands connected with the public institutions at South Boston, or to any other lands purchased or held for specific purposes, unless by special vote of the city council.

SECT. 7. The superintendent may, under the direction of the said committee, contract and agree for defraying, in part or in whole, the cost or expense incident to, or arising out of, the performance of any acts which he is by this ordinance authorized to do and perform, by transfer of lands to the contracting parties, in lieu of money, when the same can be done with advantage to the city.

Superintendent
to defray ex-
penses in cer-
tain cases.
Ibid.

Superintendent
to act as secre-
tary of com-
mittee.
May 3, 1864.

SECT. 8. The superintendent shall at all times perform such services as may be required of him by the city council, the committee on public lands, or the committee on public buildings, and shall act as secretary to the committee on public lands.

Contracts and
deeds to be
signed by mayor
and counter-
signed by supt.
Plans filed in
registry of
deeds.
Ibid.

SECT. 9. All contracts, deeds, conveyances, and leases, made by virtue of this ordinance, shall be signed by the mayor, in the same manner as if the same were made by order of the city council, and shall be countersigned by the said superintendent; and whenever any deed or conveyance of any of the public lands of the city is made, containing a reference to any plan belonging to the city, the said superintendent shall file a copy of said plan in the proper registry of deeds, unless a copy thereof may have been previously filed there.

Superintendent
to report quar-
terly to city
council.
Ibid.

SECT. 10. The superintendent shall, at least once in three months, and as often as required, make a true and correct report of his proceedings under this ordinance, and exhibit proper schedules and accounts of all lands sold, moneys received, and securities taken, to the board of aldermen, who shall send them to the common council.

Superintendent
to keep record
of vacant city
lands.
Ibid.

SECT. 11. The superintendent shall keep an accurate record or account of all the vacant lands belonging to the city; and whenever any such lands are purchased by the city for any purpose, the person or persons so purchasing the same shall make report thereof forthwith to the said superintendent.

SECT. 12. All money paid by any purchaser or lessee of the public lands, and all notes, bonds, mortgages, and securities for moneys arising or accruing from, or by virtue of, any contract made by said superintendent under this ordinance, shall be paid to, or deposited with, the collector.

Bonds, notes, and money from sales of lands to be lodged with treasurer.
May 3, 1864.

SECT. 13. No conveyance of any estate in fee or for life, in any lands belonging to the city, shall be delivered until the purchase-money is paid; but the mayor may, from time to time, release to any purchaser or his assigns, any one lot of land, when several lots are included in one contract or bond, on payment of an equivalent portion of the purchase-money.

Releases may be made by mayor.
Ibid.

SECT. 14. No expenditure of money, or contract requiring the expenditure of money, shall be made, under or by virtue of this ordinance, without the sanction of the city council, by an appropriation first made to meet such expenditure.

No expenditure made without appropriation.
Ibid.

SECT. 15. No member of the committee on public lands shall be interested, directly or indirectly, in any contract, bargain, sale, or agreement in relation to the public lands, or any matter or thing connected therewith, wherein the city is interested, without an express vote of the city council; and any and all contracts, bargains, sales, or agreements made in violation of this section shall be at all times voidable by the city.¹

Committee not to be interested in any contract, etc.
Ibid.

¹ For provisions in relation to agreements and purchases made by city officers, etc., see "Contracts with City Officers," *ante*, p. 206.

Majority of committee to form quorum for business.
May 3, 1864.

SECT. 16. The committee on public lands shall be competent to do or perform any act authorized by this ordinance, or which may hereafter be authorized, at any meeting duly notified, when a majority of the members of the committee are present, but not otherwise.

Repeal of former ordinances.
Ibid.

SECT. 17. All ordinances and parts of ordinances inconsistent herewith are hereby repealed; but such repeal shall not be construed to revise any ordinance whatever.

LEATHER.

STATUTES.

Inspector-general shall appoint deputy inspectors, etc.
G. S. c. 49,
§§ 103, 104.

1. The inspector-general of leather shall appoint one or more deputy inspectors in any place upon the application of the mayor and aldermen or selectmen, shall be answerable for their doings, and shall take a bond, with sufficient sureties from each of them, to himself and his successors in office, in a penal sum not exceeding three hundred dollars.

Appointment of measurers of upper leather.
Ibid. § 112.

2. The mayor and aldermen or selectmen of any place, when thereto requested by two or more citizens thereof, shall annually, in April, appoint one or more persons as measurers of upper leather, who shall be sworn.

Duty of measurers.
Ibid. § 113.

3. Each measurer shall furnish himself with proper racks or measures, and suitable seals; shall, when requested, go to any place within the city or town for which he is appointed measurer, and there ascertain the number of square feet in each side of upper leather made of the hides of neat cattle, buffalo, or other animal, usually heretofore sold by measure, except such as shall have been previously measured and sealed by a measurer of some place in this state, or by some person lawfully appointed for that purpose in another of the United States; and shall seal the same,

impressing thereon his name and the name of the place for which he is a measurer, at full length, and the measure thereof in square feet, as low as a quarter. No such upper leather, except what has been previously measured and sealed by one of the measurers of this state, or by some measurer lawfully appointed for that purpose in some other of the United States, shall be sold for any purpose whatsoever, until it has been measured and sealed; and whoever sells such upper leather not measured and sealed as aforesaid shall forfeit one dollar for each side of leather so sold; and such forfeiture may, in addition to the methods now provided, be recovered by an action at law in favor of any person injured by the sale of such leather not so measured and sealed.

G. S. c. 49, § 113.
Upper leather must be measured.
1866, c. 236, § 3.

4. The buyer and manufacturer of leather may, by agreement, waive inspection, measurement and sealing of leather, as provided in this act [1866, c. 236].

Measurement may be waived.
Ibid. § 4.

5. Each measurer who is appointed a measurer of upper leather for one place in a county may, upon application made to him, measure and seal leather in any other place of the same county, when there is no measurer in such other place; and he shall, upon the like application, measure and seal leather in any place of an adjoining county when there is no measurer appointed in such adjoining county.

Duly appointed measurers may act in other counties.
Ibid. § 2.

6. Every measurer shall be paid for measuring and sealing each side of upper leather the sum of one and one quarter cents, which shall be paid by the person who requests him to measure and seal the same.

Fees.
G. S. c. 49, § 114.
1872, c. 156.

7. Whoever counterfeits, wilfully alters, or defaces, such marks on any side of upper leather so measured, shall for each offence forfeit the sum of twenty-five dollars.¹

Penalty for counterfeiting marks, etc.
G. S. c. 49, § 115.

¹ For general provisions relating to the inspection, etc., of leather, see Gen. Sts. c. 49, §§ 103, 117.

LIBRARY.¹

STATUTES.

Towns and cities may establish libraries.
G. S. c. 33, § 8.

1. Each town and city may establish and maintain a public library therein, with or without branches, for the use of the inhabitants thereof, and provide suitable rooms therefor, under such regulations for its government as may from time to time be prescribed by the inhabitants of the town, or the city council.

Towns may erect buildings.
1866, c. 222, § 1.
10 Allen, 169.
97 Mass. 463.

2. Any town may, at a legal meeting, grant and vote money for the establishment, maintenance, or increase of a public library therein, and for erecting or providing suitable buildings or rooms therefor; and may receive, hold and manage any devise, bequest or donation for the establishment, increase or maintenance of any such library.²

Towns may appropriate money for free libraries.
1873, c. 306.

3. Any city or town may appropriate and pay such sum annually as it may see fit, toward defraying the expenses of maintaining any library within such city or town, to which the inhabitants are allowed free access for the purpose of using the same on the premises.

Books, laws, etc., received from state may be placed in public libraries.
1871, c. 26.

4. The city government of the several cities, and the selectmen of the several towns in this commonwealth, in which may now or hereafter be public libraries, owned and maintained by said cities and towns, are hereby authorized to place in the public libraries, for the use of the inhabitants, such books, reports and laws, as have been or may be received from the commonwealth.

Penalty for defacing books, etc., in public libraries.
1872, c. 42.

5. Whoever wilfully and maliciously or wantonly and without cause writes upon, injures, defaces, tears or destroys any book, plate, picture, engraving, or statue, belonging to any law, town, city or other public library, shall be punished by a fine of not less

¹For a historical sketch of the establishment of the Boston public library see edition of laws and ordinances, 1863, page 393. See, also, "Proceedings at the Dedication of the Building for the Public Library," 1858, and "Bates Memorial," 1864.

²This statute repealed § 9, c. 33, G. S. By statutes of 1869, chap. 250, moneys received for dog licenses may be appropriated by towns to the support of schools or public libraries. In the county of Suffolk such sums shall be used for schools. See "Dogs," p. 230.

than five dollars nor more than fifty dollars, or by imprisonment 1872, c. 42.
in the jail not exceeding six months for every such offence.

6. The city of Boston is hereby authorized to found and maintain a public library, and to make such expenditures, establish such regulations, fix such penalties for the breach thereof, and do all such acts and things as may be deemed necessary or proper to that end; and the powers hereinbefore named may be exercised by the city council of the said city, in any manner which they may prescribe, and by the agency of any persons to whom they may delegate the same: *provided, however*, that the expenditures hereinbefore mentioned shall not exceed the sum of one hundred and fifty thousand dollars within four years from the first day of January, in the year eighteen hundred and fifty-three.

City of Boston authorized to found and maintain a public library. 1853, c. 38.

Proviso. Ibid.

7. The act to unite the city of Charlestown with the city of Boston provided, among other things, that "the Charlestown public library, with all the books and documents which now or hereafter may belong thereto, shall be continued and kept within the present limits of said Charlestown; and it shall have the benefit of all gifts and legacies made heretofore or hereafter in its behalf," and that after the first Monday in May, in the year 1874, it should become a branch of the public library of Boston.¹

Charlestown branch. 1873, c. 286, § 12.

ORDINANCE.²

SECTION 1. In the month of January, in the year eighteen hundred and seventy, and annually afterwards in said month, the city council shall elect, by concurrent vote of the two branches, one member of the board of aldermen and two members of the common council, to be members of the board of trustees of the public library, to hold office during the remainder of the municipal year in which they

Board of trustees of the public library, how chosen. Tenure of office, etc. Sept. 21, 1869.

¹ A branch library was established in East Boston in 1871 (see city doc. 36, 1871); in Roxbury in 1871 (see city doc. 99, 1871); in South Boston in 1872 (see city doc. 70, 1872); in Brighton in 1873; in Dorchester in 1875 (see city doc. 24, 1875).

² An ordinance in relation to the public library, passed September 21, 1869.

Sept. 21, 1889.

are elected, and until others are elected in their places, unless they are sooner removed from office by the city council for cause. In the month of March or April, in the year eighteen hundred and seventy, and annually thereafter, in March or April, there shall be elected by concurrent vote of the two branches of the city council, two members of the board of trustees of the public library from the citizens at large, to hold their offices for three years from the first Monday in May in the year of their election, and until others are elected in their places, unless they are sooner removed from office by the city council for cause. Whenever any vacancy occurs in said board of trustees by death, resignation, or otherwise, such vacancy shall be reported by the said board to the city council; and they shall proceed to fill the same by the election of another trustee in the manner aforesaid, who shall hold his office for the residue of the term for which such member, so deceased, resigned or removed, would have held the same.

Organization of
the board of
trustees.
Ibid.

SECT. 2. The persons so chosen shall annually on the first Monday in May organize themselves into a board, by the choice of one of their number as president; and they may make such rules and regulations for their own government, and in relation to the officers appointed as hereinafter provided, as they may deem expedient, provided that they shall not be inconsistent with the provisions of this ordinance.

SECT. 3. The trustees shall have the general care and control of the public library, together with the interior of the building, its fixtures and furniture, and of the expenditure of all moneys appropriated therefor; and they may make such rules and regulations in relation to the same, and fix and enforce such penalties for their violation as they may deem expedient and proper, subject at all times to such limitations, restrictions and amendments as the city council may direct.

Trustees shall have the general care and control of library.
Sept. 21, 1869.

SECT. 4. The trustees shall annually, in the month of May or June, present to the city council a report, made up to and including the thirtieth day of the preceding April, containing a statement of the condition of the library, the number of books that have been added during the past year, with an account of all the receipts and expenditures, together with such information or suggestions as they may deem important; and they shall, at the same time, transmit to the city council the annual report of the committee for the examination of the library, hereinafter mentioned.

Trustees shall report annually to the city council.
Ibid.

SECT. 5. The board of trustees of the public library shall, annually, as soon as may be after the organization of the board, and whenever any vacancy exists, appoint a suitable person for superintendent of the public library, who shall hold his office for one year from the time of his appointment, and until some other person is appointed in his place. The superintendent may be removed at the pleasure of

Trustees shall appoint a superintendent.
Ibid.

Supt. 21, 1869.

the trustees, and shall receive such compensation as the city council may from time to time determine; he shall be a citizen of Boston, and may reside therein so much of the year as the trustees may direct.

May appoint as assistants and subordinate officers.

The board may appoint such assistants and subordinate officers as they may think necessary or expedient, and may remove the same, and shall fix their compensation: *provided*, that the amount thus paid shall not exceed, in the whole, the sum appropriated by the city council for that item of expense.

Appointment of an examining committee.
Ibid.

SECT. 6. The trustees shall annually appoint a committee of five citizens at large, who, together with a trustee as chairman, shall examine the library, and make a report of its condition to the trustees.

No payment of money to be made except by order of trustees.
Ibid.

SECT. 7. No payment of money shall be made on account of the library, except by order of the board, and in pursuance of a warrant signed by the president.

Supt. to notify committee on public buildings when repairs are needed.
Ibid.

SECT. 8. Whenever there shall be occasion for repairs or alterations in any part of the library building, the superintendent shall cause the same to be reported to the joint standing committee of the city council on public buildings.

Donations to library to be acknowledged.
Ibid.

SECT. 9. A letter of acknowledgment, signed by the president, and countersigned by the superintendent, shall be promptly sent to every person making a donation to the library.

SECT. 10. In prescribing the regulations for the care and use of the books, the trustees shall adopt such measures as shall extend the benefits of the institution as widely as possible among the citizens and residents of Boston; and when, in their judgment, the public interests will be advanced, the trustees may grant, for a limited period, privileges in the library to other individuals.

Trustees to prescribe use of books.
Sept. 21, 1869.

SECT. 11. The trustees may, from time to time, establish branch libraries of popular and useful books and periodicals in sections of the city distant from the main collection, provided the same be not established until the necessary appropriations be duly voted by the city council, and the estimates for such appropriations be made a part of the annual estimates of the city auditor. They may provide suitable rooms for this purpose, appoint the necessary attendants, and establish regulations for the same.

Trustees may establish branch libraries when appropriations are made by the city council.
Ibid.

LICENSED HOUSES.

STATUTES.¹

Penalty on innholder, etc., without license. G. S. c. 88, § 1. 24 Pick. 352. 6 Greenl. 412. 101 Mass. 214.

1. Whoever presumes to be an innholder² or common victualler, without being licensed as such according to the provisions of chapter eighty-eight of the General Statutes, shall forfeit one hundred dollars.

Aldermen, etc., may grant licenses, specifying place, etc. G. S. c. 88, § 2. 3 Pick. 281.

2. The county commissioners may grant licenses to as many persons to be innholders or common victuallers in the several towns within their respective jurisdictions as they think the public good requires; and the mayor and aldermen of the several cities may, in like manner, grant licenses to innholders and common victuallers in their respective cities. Every such license shall specify the street, lane, alley, or other place, and the number of the building, or some other particular description thereof, where such person shall exercise his employment; and the license shall not protect a person exercising his employment in any other place than that specified in the license.

Licenses to expire on first of April. Ibid. § 3.

3. Such licenses shall expire on the first day of April in each year; but a license may be granted or renewed at any time during the preceding month of March, to take effect from said first day of April; and after that day they may be granted for the remainder of the year, when the officers authorized to grant the same deem it expedient.

¹These provisions carry no authority to sell liquor, and are wholly independent of any license laws passed to authorize the sale of intoxicating liquors. By Sts. 1875, c. 99, no person is allowed to sell, or expose, or keep for sale, spirituous or intoxicating liquors without a license, except that druggists and apothecaries are allowed to sell pure alcohol for certain purposes, and importers of liquor of foreign production are allowed to sell such liquor in the original casks or packages. By an order of the city council, passed May 12, 1876, the powers and duties conferred upon the mayor and aldermen of cities in the execution of the law were (as authorized by § 20 of the act) given to a board of three license commissioners, appointed by the mayor and confirmed by the city council. By Sts. 1876, c. 162, provision was made for the seizure, destruction or sale of intoxicating liquors exposed and kept for sale contrary to law. The acts are not included in this digest, as they are liable to be changed from year to year both in form and substance.

²For the meaning of this phrase see 101 Mass. 214.

4. Every innholder shall at all times be furnished with suitable provisions and lodging for strangers and travellers, and with stable room, hay and provender for their horses and cattle; and if he is not so provided, the county commissioners or mayor and aldermen by whom the same was granted may revoke his license.

Innholders to entertain travellers, etc.
G. S. c. 88, § 8.

5. If an innholder, when requested, refuses to receive and make suitable provisions for strangers and travellers, and their horses and cattle, he shall be punished by fine not exceeding fifty dollars, and shall, by order of the court, be deprived of his license; and the court shall order the sheriff or his deputy, forthwith, to cause his sign to be taken down.

Penalties on for refusing, etc.
Ibid. § 9.
See 1865, c. 277.
1866, c. 252.
13 Allen, 247.

6. Every common victualler shall have the rights and privileges, and be subject to the duties and obligations of innholders, except that he shall not be required to furnish lodging for travellers, nor stable room, hay or provender for horses and cattle.

Rights, etc., of common victuallers.
Ibid. § 13.

7. Every innholder and common victualler shall at all times have a board or sign affixed to his house, shop, cellar or store, or in some conspicuous place near the same, with his name at large, and the employment for which he is licensed thereon, and upon neglect thereof shall forfeit twenty dollars.

Innholders, etc., to put up signs.
Ibid. § 14.

8. Whoever is convicted under the preceding provisions, and fails to pay the fine and costs awarded against him, may be imprisoned in the jail for a time not exceeding ninety days, at the discretion of the court or justice before whom the trial is had.

Punishment if fines are not paid.
Ibid. § 15.
23 Pick. 280.

9. Whoever, licensed under the preceding provisions, is convicted a second time of a breach of any of said provisions, shall, in addition to the penalties before provided, be adjudged to have forfeited his license.

On second conviction.
Ibid. § 16.

10. Whoever is convicted a third time of a breach of any of the preceding provisions shall, in addition to the penalties before provided, be punished by imprisonment in the jail not exceeding ninety days.

On third conviction.
Ibid. § 17.

11. No innholder, tavern-keeper, retailer, confectioner, or keeper of any shop or house for the sale of drink or food, or any livery-stable keeper for horse or carriage hire, shall give credit to any student in an incorporated academy or other educational institution within this State.

Innholders, etc. not to give credit to students, etc.
Ibid. § 18.
1 Pick. 177.

12. No person shall be approved or licensed for either of the Violating pre-

ceding section,
etc.
G. S. c. 88, § 19. employments aforesaid, if it appears that he has given credit
contrary to the provisions of the preceding section.

Penalty.
Ibid. § 20. 13. Whoever gives credit contrary to the provisions of section
eleven shall forfeit a sum equal to twice the amount so unlawfully
trusted or credited, whether the same is paid or not.

Commissioners,
etc., not re-
quired to li-
cense.
No fee.
Ibid. § 21. 14. Nothing contained in chapter eighty-eight of the General
Statutes shall be construed to require the county commissioners or
mayor and aldermen to grant either of the licenses aforesaid,
when, in their opinion, the public good does not require it. And
when such license is granted, no fee shall be charged therefor.

Officers may en-
ter buildings,
etc., to enforce
laws.
1862, c. 222. 15. By the act of eighteen hundred and sixty-two, chapter two
hundred and twenty-two, the provisions of the following section
are extended to all buildings or other places named in any license
granted to common victuallers.

Same subject.
G. S. c. 83, § 72. 16. Any marshal or his deputy, sheriff or his deputy, constable,
police officer or watchman, may at any time enter into a billiard-
room, bowling-alley, or other room connected therewith, for the
purpose of enforcing any law of the state; and whoever obstructs
or hinders the entrance of such officer shall be punished by fine
of not less than five, nor more than twenty dollars.

LIME AND LIME CASKS.

STATUTES.

Inspectors of
lime may be
chosen; to be
sworn.
G. S. c. 49, § 118. 1. Each city and town in which lime is manufactured, or into
which it is imported, may, annually, choose one or more inspectors
of lime, who shall be sworn, and shall inspect all lime manufactured
in such place at the time when it is filled at the kiln, and all lime
imported or sold therein.

Casks of lime,
how branded.
Ibid. § 119. 2. Every cask of lime so inspected shall be branded with the
word *inspected*, with the first letter of the Christian name, and the
whole of the surname, of the inspector, and with the name of the
place where it is manufactured.

Fees.
Ibid. § 120. 3. The inspectors shall receive for the inspection and branding
of each cask of such manufactured lime, four cents, to be paid by

the manufacturer or owner; and for the inspection of each cask of lime so imported or sold, the same sum, to be paid by the purchaser.

4. No stone lime manufactured within this state shall be sold, or exposed to sale, or shipped on board of a vessel, in casks, unless it is well burnt and pure, in good and sufficient new casks, containing either fifty or one hundred gallons each, made of well-seasoned heads and staves, with ten good and sufficient hoops on each cask, well driven and sufficiently secured with nails or pins.

Quality of lime
and casks.
Ibid. § 121.

5. When an inspection is demanded of lime manufactured in and imported from the state of Maine, the inspector shall require that such lime be in casks manufactured from sound and well-seasoned lumber, with at least ten good hoops, well driven and secured upon each cask; the staves of the cask shall be thirty inches in length and not less than half an inch in thickness; the heads shall be not less than three-fourths of an inch in thickness and shall be well crozed in; each cask to be not less than twenty-six and one-half inches between the heads, and seventeen inches between the chimes, with a good and suitable bilge, and made in a workmanlike manner; and the same rules, regulations, restrictions, and liabilities, except as to the size of the cask, shall apply to lime imported from the state of Maine, as are provided respecting lime manufactured in this state.

Description of
casks for Maine
lime.
Same rules, etc.,
except as to size
of casks.
Ibid. § 122.

6. Whoever sells, exposes to sale, ships, or receives on board of a vessel, in casks, any lime manufactured within this state, or the state of Maine, other than such as is contained in casks made according to the provisions of the preceding sections and having the aforesaid marks or brands respectively, shall forfeit one dollar and fifty cents for each cask sold, offered for sale, shipped, or received on board of a vessel: *provided*, that nothing contained in this chapter shall be construed to restrain any persons from retailing lime by the bushel, or other quantities not in casks.

Penalty for sel-
ling in other
casks, etc.
Ibid. § 123.

7. If a cask of lime is sold, or exposed to sale, or put on board of a vessel, contrary to the provisions of this chapter, the same shall be forfeited, and an inspector may seize and libel the same.

Forfeitures.
Ibid. § 124.

8. If after a cask containing lime has been branded as aforesaid, any person shifts the contents of such cask and puts therein other lime with intent to sell the same, he shall forfeit one dollar and fifty cents for each cask of lime so shifted.

Penalty for
shifting contents
of casks.
Ibid. § 125.

MARBLE, SOAPSTONE, AND FREESTONE.

STATUTE.

City and town authorities may establish regulations for survey of marble, etc.

G. S. c. 49, § 145.
1862, c. 70.

The mayor and aldermen and selectmen of a city or town may establish such regulations, with suitable penalties, respecting the appointment of a surveyor, and the survey and admeasurement of marble, soapstone, and freestone of every description, foreign or American, that is imported or brought into such place for sale, as they from time to time deem expedient.

REGULATIONS.¹

Appointment of surveyors by board of aldermen; tenure of office.

April 1, 1863.

SECTION 1. There shall be appointed annually, on the first Monday of February, or within sixty days thereafter, by the mayor and aldermen, one or more surveyors of marble, soapstone, and freestone, who shall hold their offices for one year, and until others are appointed in their places, and who shall be sworn to the faithful discharge of the duties of their office.

Duties of surveyors.
Ibid.

SECT. 2. It shall be the duty of the said surveyors to survey and admeasure all marble, soapstone, and freestone that is imported or brought into the city of Boston and offered for sale, and ascertain the number of cubic feet in each block, and the number of square feet in each slab of said marble, soapstone, or freestone, and legibly mark the same thereon, with the initials of the officer surveying it, and they shall give a certificate to the owner or vendor thereof, in the form hereinafter provided.

¹ Regulations respecting the sale of marble, soapstone, and freestone, passed by board of aldermen April 1, 1863, and amended Oct. 17, 1864.

SECT. 3. The fees for surveying marble, soapstone, and freestone shall be one and one-half cents for each cubic foot, and three-fourths of a cent for each square foot surveyed as above directed, and they shall be paid to the surveyor by the owner or vendor.

Fees of surveyors.
April 1, 1863.
Oct. 17, 1864.

SECT. 4. The certificate to be given to the owner or vendor of said marble, soapstone, or freestone shall specify the name of the owner or vendor, the name of the place from which the marble, soapstone or freestone was imported or brought, the number of cubic feet in each block, and the number of square feet in each slab surveyed, the amount of fees received, and the date of the certificate.

Certificate to be given by surveyors.
April 1, 1863.

SECT. 5. No person shall sell any marble, soapstone, or freestone imported or brought into the city of Boston, which has not been surveyed as required by these regulations, under a penalty not exceeding fifty dollars for each and every offence.

Penalty for selling marble, etc., not surveyed.
Ibid.

MAYOR'S CLERK.¹

ORDINANCE.

SECTION 1. In the month of January, annually and whenever there is a vacancy from any cause, the mayor may appoint a suitable person to perform the duties of clerk in his office; and when such an appointment is made, he shall notify the city council thereof.

Mayor may appoint a clerk and notify city council.
Oct. 26, 1869.

¹ An ordinance to establish the office of mayor's clerk, passed October 26, 1869.

To hold office during pleasure of the mayor; compensation to be determined by city council.
Oct. 23, 1869.

SECT. 2. The said clerk shall hold his office during the pleasure of the mayor, and shall perform such services, clerical or otherwise, as the mayor may prescribe. He shall receive such compensation therefor as the city council may from time to time determine.

MEAL, GRAIN, AND BREAD.

STATUTES.

Grain and meal, how sold.

G. S. c. 49, § 63. 1. In all contracts for the sale and delivery of wheat, corn, rye, oats, barley, buckwheat, cracked corn, ground corn, or corn meal, ground rye, or rye meal, and any other meal, except oatmeal, the same shall be bargained for and sold by the bushel.

Weight of bushel.

Ibid. § 64.

2. A bushel of wheat shall be sixty pounds; a bushel of corn or rye, fifty-six pounds; a bushel of oats, thirty-two pounds; a bushel of barley, or buckwheat, forty-eight pounds; and a bushel of cracked corn, corn meal, rye meal, or any other meal, except oatmeal, fifty pounds avoirdupois.

Measurers to be appointed by mayor and aldermen.
Duty.
Ibid. § 65.

3. The mayor and aldermen of cities and selectmen of towns shall annually appoint one or more measurers of grain, and when but one is appointed by them they may authorize him to appoint deputy-measurers. Each of such measurers and deputies shall, when called upon by either of the parties to a contract for the sale of any quantity exceeding one bushel of either of the articles mentioned in the preceding section, ascertain the weight thereof, and give a certificate of the number of bushels as ascertained by weight, according to the rule therein prescribed.

Penalty for short weight when measurer not employed.
Ibid. § 66.

4. Whoever sells or delivers any quantity exceeding one bushel of either of the articles aforesaid, without the same having been weighed by one of the public measurers appointed under the preceding section, shall forfeit the sum of two dollars for every measured bushel so delivered not containing the number of pounds hereinbefore required, to be recovered by the purchaser in an action of tort.

5. The fees of such measurers shall be prescribed by the mayor and aldermen or the selectmen of the several places in which they are appointed, and shall be paid one-half by the seller and one-half by the purchaser.

Fees of measurer, who to pay.
G. S. c. 49, § 67.

6. If a measurer or deputy-measurer uses, or has in his possession with intent to use, for the purposes herein provided, any false weights, scales, balance, or other instrument for weighing, or colludes with the purchaser or seller, with intent to defraud the other party, or makes and utters a false and fraudulent certificate under this chapter, he may be removed from office by the mayor and aldermen or selectmen, and shall, also, on conviction thereof, be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding six months in the house of correction.

Penalty for false weights, etc., or collusion, etc.
Ibid. § 68.

7. A loaf of bread for sale shall be two pounds in weight. Bread, except that composed in chief part of rye or maize, shall be sold in loaves, half, three-quarter, and quarter, loaves, but not otherwise.

Bread, weight of; how sold.
Ibid. § 5.

8. In every shop or place where bread is sold by retail, and in each front window thereof, there shall be conspicuously placed a card, on which shall be legibly printed a list of the different kinds and qualities of loaves sold there, with the price of each by the loaf, half, three-quarter, and quarter, loaf.

Prices of bread, etc., to be displayed where sold.
Ibid. § 6.

9. Bread sold in any shop or place shall be weighed in presence of the buyer, and if found deficient in weight, bread shall be added to make up the legal weight.

Bread to be weighed, etc.,
Ibid. § 7.

10. Whoever violates either of the provisions of the three preceding sections shall forfeit ten dollars for each offence, to be recovered on complaint or indictment to the use of the party suing therefor.

Penalty.
Ibid. § 8.
1870, c. 395.

11. The four preceding sections shall not apply to rolls or fancy bread weighing less than one-quarter of a pound.

Rolls, etc.
G. S. c. 49, § 9.

FEES.¹

Ordered, That on and after the first day of October, 1873, the fees for measuring wheat, corn, and

Fees for measuring grain.
Sept. 17, 1873.

¹ Order of the board of aldermen, passed Sept. 17, 1873.

Sept. 17, 1873. other grains shall be *one cent* a bushel, which shall be in full for all services rendered by the measurer or his deputies.

MESSENGER.

ORDINANCE.¹

Messenger to
city council,
now elected.
Oct. 14, 1852.

1. There shall be elected annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of both branches of the city council, a messenger to the city council, who shall hold his office for one year, if not sooner removed, from the first Monday of April in the year in which he is chosen, and until another is chosen in his place; he may be removed at any time by the city council.

His duties.
Nov. 24, 1865.

2. The messenger shall devote his whole time to the service of the city, and shall attend all meetings of the board of aldermen, the common council, and the school committee. He shall wait upon all committees and boards, when in session at the city hall, and in general shall perform all services required by the mayor, by either branch of the city council, or by such committees or boards.

To appoint as-
sistants.
Oct. 14, 1852.
Oct. 27, 1865.

3. The messenger shall appoint assistants, subject to the approval of the city council, who shall hold their offices one year, unless sooner removed by him or by the city council.

¹ An ordinance establishing the office of messenger to the city council, passed October 14, 1852; amended October 27, 1865, and November 24, 1865.

4. The messenger, and his assistants, shall receive such compensation as the city council may from time to time determine.

Compensation.
Oct. 27, 1865.

MILITIA.¹

STATUTES.

ENROLMENT.

1. Every able-bodied male citizen, resident within this State, of the age of eighteen years, and under the age of forty-five years, excepting persons exempted by the following sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia. Persons so convicted after enrolment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

Persons to be
enrolled.
1874, c. 320, § 1.
14 Gray, 615.

2. Assessors shall annually in May or June make a list of persons living within their respective limits liable to enrolment, and place a certified copy thereof in the hand of the clerks of their respective cities and towns, who shall place it on file with the records of such city or town, and annually in May, June or July transmit returns of the militia thus enrolled to the adjutant-general.

Assessors to
prepare lists,
and clerks to
make returns.
Ibid. § 2.

3. Keepers of taverns or boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of the assessors within whose bounds their houses are situated, or of

Penalty for not
giving informa-
tion to assess-
ors.
Ibid. § 3.

¹ A town has no authority, without special authority from the legislature, in time of war and danger of hostile invasion, to raise money to give additional wages to the militia and for other purposes of defence. 13 Mass. 272.

A town has no authority to vote money for the purchase of uniforms for an artillery company; and will be restrained by injunction from paying the money, even after the officers of the company, upon the faith of an order drawn in their favor by the selectmen on the town treasurer, have purchased the uniforms and deposited them in the armory, to be there kept as the property of the town. 4 Gray, 502.

1874, c 320, § 3. persons acting under them, give information of the names of persons residing in their houses liable to enrolment or to do military duty; and every such person shall, upon like application, give his name and age; and if such keeper, master, mistress or person refuses to give such information, or gives false information, such keeper, master or mistress shall forfeit and pay twenty dollars, and such person shall forfeit and pay twelve dollars, to be recovered on complaint of either of the assessors.

Enrolled militia not liable to active duty, except in case of war. Ibid. § 4.

4. The enrolled militia shall be subject to no active duty, except in case of war, invasion, the prevention of invasion, the suppression of riots, and to aid civil officers in the execution of the laws of the commonwealth; in which cases the commander-in-chief shall order out for actual service, by draft or otherwise, as many of the militia as necessity demands.

Draft from the militia. Ibid. § 5.

5. The order of the commander-in-chief may be directed to the mayor and aldermen of cities, or to the selectmen of towns, who shall thereupon appoint a time and place of parade for the militia, in their city or town, and order them to appear at the time and place, either by leaving a written notice, or orally, and then and there proceed to draft as many thereof, or accept as many volunteers, as is required by the order of the commander-in-chief; and shall forthwith notify the commander-in-chief that they have performed such duty.

CITY TO PROVIDE AMMUNITION, ETC.

Towns may be required to provide ammunition and camp-kettles. Ibid. § 8.

6. When the commander-in-chief deems it necessary he shall require cities and towns to provide, in some suitable place therein, sixty-four pounds of powder, one hundred pounds of musket and rifle balls, and also three copper, iron or tin camp-kettles for every sixty-four soldiers enrolled in said town, and the same proportion for a greater or less number, and to keep the same until such requirement is revoked. Every place neglecting to comply with such requisition shall forfeit and pay not less than twenty nor more than five hundred dollars.

EXEMPTIONS.

Persons exempted from all military duty. Ibid. § 9.

7. In addition to the persons exempted from enrolment in the militia by the laws of the United States, the persons hereinafter mentioned shall also be absolutely exempted from the enrolment,

viz.: justices and clerks of courts of record ; registers of probate and insolvency ; registers of deeds and sheriffs ; officers who have held or may hold commissions in the regular or volunteer army or navy of the United States ; officers who have held, for a period of five years, commissions in the militia of this or any other state of the United States, or who have been superseded and discharged, or who held commissions in any corps at the time of its disbandment ; staff officers heretofore exempted, and whose offices shall become vacant by the provisions of section forty-six [chap. 320, acts of 1874] ; ministers of the gospel ; practising physicians ; the superintendents, officers and assistants employed in or about either of the state hospitals, state almshouses, state prison, jails or houses of correction ; keepers of light-houses, telegraphic operators, and conductors and engine-drivers of railroad trains, and seamen actually employed on board of any vessel, or who have been so employed within three months next preceding the time of enrolment.

8. Every person of either of the religious denominations of Quakers or Shakers, who, on or before the first Tuesday in May, annually, produces to the assessors of the city or town in which he resides, a certificate signed by two or more of the elders or overseers (as the case may be), and countersigned by the clerk of the society with which he meets for public religious worship, shall be exempted from enrolment. The certificate shall be in form as follows :—

Exemption of
Quakers and
Shakers.
Ibid. § 10.

We, the subscribers, of the society of people called _____, in the town of _____, in the county of _____, do hereby certify that _____ is a member of our society, and that he frequently and usually attends religious worship with said society, and we believe he is conscientiously scrupulous of bearing arms.

E. F., *Clerk.*

A. B.	} Elders or overseers (as the case may be).
C. D.	

9. Enginemen, or members of the fire department in a city or town, shall be exempted from military duty by forthwith filing with the assessors of the city or town in which they reside, a certificate that they are enginemen or members of the fire department as aforesaid, signed by the mayor and aldermen of such city, or the selectmen of such town; but when a member of the volunteer company is, after his enlistment, appointed an engineman or member of the fire department, it shall not vacate his enlistment.

ARMORIES.

Armories to be provided by cities and towns.
1874, c. 320, § 83.

Regimental and battalion headquarters to be provided.

10. The mayor and aldermen and selectmen shall provide for each company and cadet corps of the volunteer militia within the limits of their respective cities or towns a suitable armory, for the deposit and safe-keeping of the arms, equipments, uniforms and other military property furnished it by the state, and for the purposes of drill, and shall also provide suitable places for the parade, target-practice and company-drill of the militia belonging to their respective cities and towns. They shall also provide for the headquarters, located within their limits, of each division, brigade, regiment or battalion, a suitable room for the keeping of books, the transaction of business and the instruction of officers. Cities and towns in which companies of militia, cadet corps, or headquarters of divisions, brigades, regiments or battalions are located, are hereby authorized to raise money, by taxation or otherwise, for the purpose of erecting suitable buildings for the armories of such companies, corps of cadets, or the head-quarters of such divisions, brigades, regiments or battalions. When a company is formed from different places, the location of such armory shall be determined by a majority of its members, subject to the approval of the adjutant-general. Armories provided for the militia shall not be used for any purpose whatever other than the legitimate uses of the companies occupying them, and the commander of any company who shall allow the armory of his company to be let for other than the use of his company, unless by approval of the commander-in-chief, shall be liable to a fine of two hundred dollars, to be recovered, on complaint, by the adjutant-general.

Amount paid armory rent to be certified to the adjutant-general.
Ibid. § 84.

11. The mayor and aldermen of cities and selectmen of towns shall annually, in October or November, transmit to the office of the adjutant-general a certificate, verified by the oath or affirmation of at least two of their board, showing the name of each company furnished with an armory, and of each division, brigade, regiment, battalion or cadet corps furnished with head-quarters, the amount paid for the rent thereof, and that the rent charged therefor is fair and reasonable, according to the value of real estate in their place.

12. The adjutant-general shall annually examine all certificates so returned to his office, institute any inquiries he deems expedient relative thereto, and allow them in whole or in part, to an amount not exceeding six hundred dollars for one corps of cadets, company of infantry, artillery, or cavalry, and not exceeding three hundred dollars for each division, brigade, regimental or battalion headquarters. He shall, within ten days after such examination, file in the office of the auditor his certificate, stating the sums allowed, the name of the command for whose use each sum is allowed, and the place to which it belongs; and shall thereupon notify the mayor, aldermen or selectmen of the sum allowed to their place, which sum shall be paid upon the warrant of the governor to such mayor and aldermen or selectmen.

Claims for rent to be audited and paid.
1874, c. 320, § 85.

13. A city or town receiving from the treasury of the commonwealth, by reason of a false return or certificate, under section eighty-four [§ 11 of this digest], any money to which such place is not entitled, shall forfeit a sum not exceeding four times the amount of money so received.

Penalty for false certificate.
Ibid. § 86.

14. The commander-in-chief may at any time detail an officer to examine any armory and report the condition thereof, and of the arms, equipments and equipage therein deposited.¹

Armory and arms may be examined at any time.
Ibid. § 87.

CITY TO PROVIDE TRANSPORTATION, ETC.

15. The selectmen of a town and the mayor and aldermen of a city to which men ordered out, detached or drafted belong, when required in writing by a commander of a regiment or detachment, shall provide carriages to attend them with further supplies of provisions, and to carry necessary baggage, and provide necessary camp equipage and utensils, until notified by the commanding officer to desist; and shall present their accounts on or before the fifth day of January in each year to the adjutant general. For any neglect by such mayor and aldermen or selectmen, under this sec-

Selectmen, etc., to provide carriages to attend with supplies.
Ibid. §§ 121, 136

¹ It seems, that where the commander-in-chief has ordered that a militia company be disbanded, the adjutant-general, acting under orders and with the consent of the town, may forcibly enter an armory provided for the company by the commonwealth, through the agency of the town, and remove the arms and equipments distributed to the company by the commonwealth. 1 Allen, 193.

1874, c. 320, §§
121, 136.

tion, such city or town shall forfeit, to the use of the commonwealth, not less than twenty nor more than five hundred dollars. The officer to whom any articles above mentioned are delivered shall be responsible that care is taken of the same.

USE OF MILITIA IN SUPPRESSING RIOTS.¹

Troops may be
ordered out in
case of riot.
Ibid. § 122.

16. When there is in any county a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of the commonwealth, or when such tumult, riot or mob is threatened, and the fact is made to appear to the commander-in-chief, or mayor of a city,² or to a court of record sitting in said county, or if no such court is sitting therein, then to a justice of said court, or if no such justice is within the county, then to the sheriff thereof, the commander-in-chief may issue his order, or such mayor, court, justice or sheriff may issue a precept, directed to any commander of a division, brigade, regiment, battalion or company, directing him to order his command, or part thereof (describing the kind and number of troops), to appear at a time and place therein specified, to aid the civil authority in suppressing such violence and supporting the laws, which precept, if issued by a court, shall be in substance as follows: —

Form of pre-
cept.

_____, ss.

COMMONWEALTH OF MASSACHUSETTS.

L. S.

To (*insert the officer's title*) A. B., commanding (*insert his command*).

Whereas it has been made to appear to our justices of our _____, now holden at _____, within and for the county of _____, that (*here state one or more of the causes above mentioned*), in our county of _____, and that military force is necessary to aid the

¹ See "Riots," *post*, p. 667.

² The determination of the mayor of a city that a riot or mob is threatened, is conclusive that the exigency existed required by the statute to authorize him to call out the volunteer militia to aid the civil authority in enforcing the laws. 5 Gray, 121.

civil authority in suppressing the same ; now, therefore, we command ^{1874, c. 320, § 122.} you that you cause (*here state the number, and kind of troops required*), armed and equipped, and with ammunition, as the law directs, and with proper officers, either attached to the troops or detailed by you, to parade at , on , then and there to obey such orders as may be given them according to law. Hereof fail not at your peril, and have you there this writ, with your doings returned thereon.

Witness L. S., Esq., at , on the day of ,
in the year

C. D., Clerk.

And if the same is issued by a mayor, justice or sheriff, it shall be under his hand and seal, and otherwise varied to suit the circumstances of the case.

17. The officer to whom the order of the commander-in-chief or such precept is directed, shall forthwith order the troops therein mentioned to parade at the time and place appointed. If he refuses or neglects to obey such order or precept, or if any officer neglects or refuses to obey an order issued in pursuance thereof, he shall be cashiered and punished by fine or imprisonment not exceeding six months, as a court-martial may adjudge. Any person neglecting or refusing to appear at the place of parade to obey an order issued in such case, or any person advising or endeavoring to persuade another to refuse or neglect to appear at such place, or to obey such order, shall forfeit, to the use of the commonwealth, five hundred dollars.

Penalty for refusing or neglecting to obey order.
Ibid. § 123.

18. Such troops shall appear at the time and place appointed, armed and equipped, and with ammunition as for inspection of arms, and shall obey and execute such orders as they may then and there receive according to law.

Troops to appear armed and equipped.
Ibid. § 124.

ILLEGAL ARMED ORGANIZATIONS.

19. It shall not be lawful for any body of men whatsoever, other than the regularly organized corps of the volunteer militia, the troops of the United States, the ancient and honorable artillery company, the veteran artillery association of Newburyport, the veteran cadet association of Salem, and the Salem light infantry

None but regularly organized companies allowed to parade
Ibid. § 149.

1874, c. 320, § 149. veteran association, to associate themselves together as a military company or organization, or to parade in public with arms in any city or town of this commonwealth without the license of the governor thereof, which may at any time be revoked; nor shall it be lawful for any city or town to raise or appropriate any money towards arming, equipping, uniforming, or in any way supporting, sustaining or providing drill-rooms or armories for any such body of men: *provided*, that associations wholly composed of soldiers honorably discharged from the service of the United States may parade in public with arms upon the reception of any regiments or companies of soldiers returning from said service, and for the purpose of infantry escort duty at the burial of deceased soldiers, having first obtained the written permission so to do of the mayor and aldermen or selectmen of the cities or towns in which they desire to parade.

Penalty for unlawful military parades.
Ibid. § 150.

20. Whoever offends against the provisions of the preceding section, or belongs to or parades with any such unauthorized body of men, with arms, shall be punished by a fine not exceeding the sum of ten dollars, or by imprisonment in the house of correction or common jail for a term not exceeding six months.

"Selectmen"
to include mayor
and aldermen.
Ibid. § 144.

21. The provisions of this chapter [1874, c. 320] concerning the powers and duties of the selectmen of towns shall be construed to include the mayor and aldermen of any city.

INSPECTION OF MILK.

STATUTES.

Inspector to be appointed and to give public notice.
1864, c. 122, § 1.

1. The mayor and aldermen of cities shall, and the selectmen of towns may, annually, appoint one or more persons to be inspectors of milk, for their respective places, who shall, before entering upon the duties of their offices be sworn. Each inspector shall give notice of his appointment by publishing the same two weeks

in a newspaper published in his city or town, or if no newspaper is published therein, by posting up such notice in two or more public places in such city or town. 1864, c. 122, § 1.

2. The inspectors shall keep an office and books for the purpose of recording the names and places of business of all persons engaged in the sale of milk within their limits. They may enter any place where milk is stored or kept for sale, and all carriages used in the conveyance of milk; and whenever they have reason to believe any milk found therein is adulterated, they shall take specimens thereof and cause the same to be analyzed, or otherwise satisfactorily tested, the result of which they shall record and preserve as evidence; and a certificate of such result, sworn to by the analyzer, shall be admissible in evidence in all prosecutions under this act. The inspectors shall receive such compensation as the mayor and aldermen or selectmen shall determine. Inspector to keep an office and books, etc. Compensation. Ibid. § 2. 11 Allen, 264.

3. Whoever neglects to cause his name and place of business to be recorded in the inspector's books, and his name legibly placed upon all carriages used by him in the conveyance of milk, before engaging in the sale thereof, shall forfeit twenty dollars for the first offence, and for a second and each subsequent offence, fifty dollars. And whoever offers for sale milk produced from cows fed upon the refuse of distilleries, or any substance deleterious to the quality of the milk, or whoever knowingly offers for sale milk produced from sick or diseased cows, shall forfeit twenty-five dollars for the first, and fifty dollars for every subsequent offence. Whoever, in the employment of another, knowingly violates any provision of this section, shall be held equally guilty with the principal, and suffer the same penalty.¹ Milkmen and dealers to register their names, etc. Penalty for violation of rule. Ibid. § 4. 1 Allen, 593. 2 Allen, 157. 9 Allen, 489. 10 Allen, 199. 107 Mass. 194.

4. Whoever sells or exchanges, or has in his possession with intent to sell or exchange, or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, shall, for each offence, be punished by a fine of not less than twenty, nor more than one hundred dollars.² Penalty for selling, etc., adulterated milk. 1869, c. 150, § 1.

¹ A person may be convicted of selling adulterated milk under St. 1864, c. 122, § 4, without proof that he knew it to be adulterated. 9 Allen, 489.

² The legislature has power to make it a criminal offence to sell pure milk mixed with pure water without fraud. 11 Allen, 264.

Milk for making
butter and
cheese.

1869, c. 150, § 2.

Inspector to in-
stitute com-
plaint.

Ibid. § 3.

Penalty for sell-
ing milk from
which the cream
has been re-
moved.

1870, c. 311.

Penalties for
selling adulter-
ated milk.

1872, c. 319, § 1.

11 Allen, 264.

Penalties for
selling milk
from which the
cream has been
removed.

Ibid. § 2.

Penalties for
knowingly sell-
ing adulterated
milk.

Ibid. § 3.

11 Allen, 264.

Prosecutions by
complaint or
indictment.

Ibid. § 4.

5. Whoever adulterates by water, or otherwise, milk to be delivered for manufacture into butter or cheese, shall be liable to the penalties provided in the preceding section.

6. It shall be the duty of every inspector of milk to institute complaint, on the information of any person who shall lay before him satisfactory evidence on which to sustain the same.

7. Any person who shall sell, or shall offer for sale, any milk, knowing that the cream, or any part thereof, has been removed therefrom, or who shall with such knowledge deliver any such milk to any person to be made into butter or cheese, without giving notice at the time to the person to whom such milk is sold, offered for sale, or delivered, that such cream has been removed, shall be punished by a fine of not less than twenty dollars nor more than one hundred dollars.

8. Whoever sells or exchanges, or has in his possession with intent to sell or exchange, or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, shall for the first offence be punished by a fine of not less than twenty nor more than one hundred dollars; and for any subsequent offence by a fine not less than fifty nor more than three hundred dollars.

9. Whoever sells or exchanges, or has in his possession with intent to sell or exchange, or offers for sale or exchange, as pure milk, any milk from which the cream, or any part thereof, has been removed, shall be liable to the penalties provided in the preceding section.

10. Whoever knowingly sells or exchanges, or has in his possession with intent to sell or exchange, or offers for sale or exchange, adulterated milk, or milk to which water or any foreign substance has been added, shall for the first offence be punished by a fine of not less than fifty nor more than three hundred dollars, and for any subsequent offence by a fine not less than one hundred dollars, and imprisonment in the house of correction not less than thirty nor more than ninety days.

11. Violations of this act [1872, c. 319] may be prosecuted by complaint or indictment before any court of competent jurisdiction, and one-half of any fine paid shall go to the complainant.

12. All milk-cans used by persons engaged in the business of purchasing milk at wholesale shall be sealed annually by the sealer of weights and measures in the city or town where the purchaser resides, and no milk-can shall be sealed which does not contain one or more quarts, without fractional parts of a quart, and the capacity of the can shall be legibly marked upon it by such sealer.

Milk-cans used by wholesale buyers to be sealed and legibly marked.
1873, c. 180, § 1.
1 Allen, 434.

13. When milk is purchased by the can, such can shall hold eight quarts of milk and no more.

Can to contain eight quarts.
Ibid. § 2.
Penalties.
Ibid. § 3.

14. Every person violating the provisions of this act [1873, c. 180] shall be punished by a fine of not less than twenty dollars nor more than fifty dollars, one-half of which fine shall inure to the use of the complainant.

MUSICIANS.

STATUTE.

1. The mayor and aldermen of any city may adopt rules and orders not inconsistent with the laws of this commonwealth for the regulation and control of persons who shall, after the passage of this act, frequent the streets and public places in such city, playing on hand-organs or other musical instruments, beating drums, blowing trumpets, or coasting with sleds or other vehicles, with penalties for the violation thereof, not exceeding twenty dollars for each offence.¹

Cities may regulate and control itinerant musicians.
1875, c. 136.

RULES OF THE MAYOR AND ALDERMEN.²

Ordered, That on and after the first day of August, 1869, and until otherwise ordered, no person or persons shall appear in any of the streets or public places in the city of Boston to play upon any hand-organ, hurdy-gurdy, tambourine, or other musi-

Persons shall not play upon hand-organs, etc., without permit.
Aug. 3, 1869.

¹ For ordinance in relation to coasting in streets see "Streets," p. 777.

² Rules of mayor and aldermen, passed August 3, 1869.

Aug. 3, 1869.

cal instrument, or beat upon a drum, or blow any horn or trumpet, without a permit from the chief of police, or deputy chief of police; and any such permit may be revoked by the said chief or his deputy, whenever either of them deems it expedient; and whoever appears in any of the streets or public places to play upon either of such instruments, without such permit, shall be liable to a fine of not less than two dollars, nor more than twenty dollars.

Penalty.

NOTICES AND PLACARDS.

STATUTE.

Penalty for destroying show-bill, placard, etc.
1870, c. 259.

Any person who shall wilfully or maliciously mutilate, destroy or remove any show-bill, placard, programme, poster or other advertisement of any exhibition, show, or amusement licensed under the provisions of section seventy-four of chapter eighty-eight of the General Statutes, before the same has taken place, posted up on any walls, fence, bill-board or other structure not lawfully under his control, shall be punished by fine not exceeding ten dollars.

ORDINANCES.¹

No person shall post notices, etc., on buildings, etc., without permission of owner.
Nov. 5, 1869.
Oct. 1, 1872.

SECTION 1. No person shall post up, or affix, in any manner, any placard, notice, or bill, either written or printed, upon the fences, or walls, or any part of any building in the city of Boston, and no person shall paint, print, or write, or cause to be painted, printed, or written, any notice, advertisement or bill upon the

¹ An ordinance to regulate the posting of placards, notices and bills, passed Nov. 5, 1869; an ordinance to amend the same, passed Oct. 1, 1872.

fences, or walls, or any part of any building in the city of Boston; without the previous consent of the person or persons having possession of the same.

Nov. 5, 1869.
Oct. 1, 1872.

SECT. 2. No person shall post up, or affix, in any manner, any placard, notice, or bill, either written or printed, upon any curbstone, or sidewalk, or upon any tree in any street, square, park, or public place, in the city of Boston, or upon any wall, telegraph-pole, lamp-post, fence or building, belonging to the city of Boston, without the consent of the mayor, and no person shall paint, print or write, or cause to be painted, printed or written, any notice, advertisement or bill upon any curbstone or sidewalk, or upon any tree in any street, square, park or public place in said city, or upon any wall, telegraph-pole, lamp-post, fence or building belonging to said city, without the consent of the mayor.

No person shall
post notices on
curb-stones, etc.
Ibid.

SECT. 3. Any person who violates the provisions of this ordinance shall forfeit and pay for every violation a sum not less than five dollars, nor more than fifty dollars.

Penalty.
Nov. 5, 1869.

OFFICERS AND OFFICE HOURS.

ORDINANCES.¹

SECTION 1. All city officers required by the city ordinances to be elected or appointed by the concur-

Time of election
or appointment
of city officers.

¹ Ordinances passed September 19, 1850, July 2, 1857, June 14, 1862, December 30, 1864, September 26, 1865, November 24, 1865, December 24, 1875.

June 14, 1862.

Exceptions.

rent vote of the city council, or to be appointed by the mayor, by and with the advice and consent of the board of aldermen, excepting those officers the time of whose election or appointment is otherwise prescribed by the statutes of the commonwealth; also excepting the treasurer, auditor, and assessors, shall be elected or appointed, as the case may be, on the first Monday of February in each year, or within sixty days thereafter.¹

Tenure of office.
Ibid.

SECT. 2. Every city officer elected or appointed under the provisions of the foregoing section shall hold his office, if not sooner removed, for one year from the first Monday of April in the year in which he is elected or appointed, and until a successor be elected or appointed and qualified; but he may at any time be removed by the authority under which he may have been elected or appointed, and any vacancy occasioned by the removal, resignation, or death of such city officer, may be filled at any time.

Removal and
vacancies.
Ibid.

Mayor to make
his nominations
to board of al-
dermen.
Ibid.
See charter, § 49,
ante.

SECT. 3. In all cases where appointments to office are directed by any law or ordinance to be made by the mayor and aldermen, or by the mayor, by and with the advice and consent of the aldermen, the mayor shall send his nominations to the board of aldermen,

¹ A city ordinance of Lawrence provided that the two branches of the city council should, in convention, annually appoint a commissioner of streets, who should hold office until the appointment of his successor. The first appointment was on the organization of the city in May, 1853, but since that time the appointments were made annually in January. In April, 1874, the city council not yet having met in convention, a petition for a writ of *mandamus* to compel them to meet was filed. *Held*, that the writ should issue. 111 Mass. 90.

directed to the city clerk, who shall forthwith enter the same in a book kept for that purpose. And whenever the mayor removes any officer, he shall send information thereof to the said board, which shall be entered on their record at the next meeting.

June 14, 1862.

SECT. 4. Whenever any ordinance provides for the election of any city officer, at or within a time specified, such provision shall be considered merely as directory; and an election after the expiration of such time shall be valid.

Certain provisions directory merely.
Sept. 9, 1850.

SECT. 5. Whenever there is any vacancy by death, resignation, or otherwise, in any office required to be filled by the concurrent vote of the city council, the mayor may, if in his judgment the public interest requires such office to be immediately filled, appoint a suitable person to discharge its duties temporarily, and until the city council shall fill the vacancy.¹

Vacancies, how filled.
Dec. 30, 1864.

SECT. 6. The committee on public buildings shall, under the direction of the board of aldermen, assign and furnish, in a proper manner, suitable offices and rooms in the public buildings, or procure the same elsewhere, at the expense of the city, for the various city officers.

Committee on public buildings to assign, etc., offices and rooms.
Sept. 9, 1850.
See "Buildings," *ante*.

SECT. 7. The office hours or hours of labor of the several heads of departments, clerks, or other officers connected with the city government, who perform

Office hours fixed.
Dec. 24, 1875.

¹ For appointment of auditor *pro tempore*, see "Finance," p. 310, and of city clerk *pro tempore*, see p. 199, *ante*.

Dec. 24, 1875.

clerical or office duties, shall, with exceptions hereinafter mentioned, be from nine of the clock in the forenoon until five of the clock in the afternoon, every week-day except Saturdays and legal holidays; and on Saturdays all city offices shall be closed at two of the clock in the afternoon: *provided, however*, that any clerk or other officer may, in case of necessity, be required by the principal officer of the department with which he is connected, or by the committee or board having charge of said department, to perform service on Saturdays or other week-days, for a greater number of hours, without extra compensation.

Hours of collector and treasurer.
Ibid.

SECT. 8. The offices of the city treasurer and city collector shall be open for the receipt and disbursement of money from nine of the clock in the forenoon until two of the clock in the afternoon of every week-day except legal holidays.

Hours of police and health departments.
Ibid.

SECT. 9. The office hours in the central police office at city hall shall be from eight of the clock in the forenoon to six of the clock in the afternoon every day in the year. The city registrar's office shall be open, in addition to the hours provided in section seven for other departments, from eleven of the clock in the forenoon until twelve of the clock noon, every day in the year, for the receipt of returns from undertakers. The office of the board of health shall be open, in addition to the hours provided in section one for other departments, from ten of the clock in the forenoon until twelve of the clock noon, every day in the year, for the issuing of permits for burials and the removal of dead bodies.

ORDINANCES AND BY-LAWS.¹

STATUTES.

1. It is provided by the constitution of the commonwealth that all by-laws, of municipal or city governments, erected and constituted by the general court, shall be subject, at all times, to be annulled by the general court.

By-laws may be annulled by general court.
Const. of Mass. Amend. art. 2.
Adopted 1821.

2. The several cities shall continue to have and exercise all the powers and privileges, and be subject to all duties and liabilities, mentioned in the acts establishing such cities and in the several acts relating thereto.

Powers, etc., of cities to continue.
G. S. c. 19, § 1.

3. The city charter, section thirty-five, provides that the city council shall have power to make all such needful and salutary by-laws or ordinances, not inconsistent with the laws of this commonwealth, as towns by the laws of this commonwealth have power to make and establish, and to annex penalties, not exceeding fifty dollars, for the breach thereof, which by-laws shall take effect and be in force from and after the times therein respectively limited, without the sanction or confirmation of any court or authority whatsoever.

Power of city council to make by-laws.
1854, c. 143, § 35.
109 Mass. 355.
110 Mass. 433.

4. Towns may make such necessary orders and by-laws, not repugnant to the laws of the state, for directing and managing the

Towns, etc., may make by-laws and affix penalties.

¹ By-laws must be reasonable, and not repugnant to the constitution or laws of the commonwealth. They must not interfere with the liberty, property or business of the citizens, more than is necessary to secure the lawful and proper object in view. The question whether a by-law is reasonable or not is one for the court, and not for the jury, to decide. *Commonwealth vs. Worcester*, 3 Pick. 462. *Vandine's case*, 6 Pick. 187. *Austin vs. Murray*, 16 Pick. 126. *Commonwealth vs. Patch*, 97 Mass. 221. The mayor and aldermen have no power to permit a violation of a by-law of a city. *Commonwealth vs. Worcester*, 3 Pick. 462. A by-law may be good in part and void in part. *Commonwealth vs. Drew*, 10 Met. 382; *Amesbury vs. Bowditch Ins. Co.*, 6 Gray, 607, and cases cited. Any dicta to the contrary in *Austin vs. Murray*, 16 Pick. 121, were overruled in this latter case.

For time when ordinances take effect see 109 Mass. 355. For construction of ordinances see 110 Mass. 353. By Gen. Sts. c. 3, § 7, the word "ordinance" as applied to cities is synonymous with the word "by-law."

G. S. c. 18, § 11. prudential affairs, preserving the peace and good order, and maintaining the internal police thereof, as they may judge most conducive to the welfare of the town; and may affix penalties for breaches of such orders and by-laws not exceeding twenty dollars for one offence.¹

5. Such by-laws shall be binding upon all persons coming within the limits of the town, as well as upon the inhabitants thereof.

6. All by-laws made by a town shall be published in one or more newspapers printed in the county where the town is situated.

7. In a complaint, prosecution or other process, founded on a special act of the legislature, an ordinance or by-law of any city or town, or an order of the mayor and aldermen, it shall be sufficient to set forth the offence fully, plainly, substantially, and formally; and no part of such law, ordinance, by-law, or order, need be set forth.

8. When a town in a by-law imposes a duty, and affixes a penalty for refusal or neglect to perform the same, they may therein provide, that in case of such refusal or neglect, the duty may be performed by officers therein named, at the expense of the party liable to perform the same, and such expense may be recovered of him by the town in an action of contract in the name of the treasurer, but the amount recovered shall not exceed the penalty fixed in the by-law.

9. The city marshal or other police officer, or the city treasurer, may prosecute for all fines and forfeitures which may inure to the city or the poor thereof, and may also prosecute for trespasses committed on any public building or enclosure within the limits of the city.²

¹ Chap. 18 of the General Statutes, and all other laws relating to towns, apply to cities so far as they are not inconsistent with the general or special provisions relating thereto; and cities are subject to the liabilities, and city councils have the powers of towns; the mayor and aldermen have the powers and are subject to the liabilities of selectmen; and the city clerks, treasurers, and other city officers have the powers and duties of corresponding town officers, if no other provisions are made in relation thereto. Gen. Sts. c. 19, § 2. See 103 Mass. 443.

² A constable cannot prosecute under Gen. Sts. c. 19, § 15, and St. 1870, c. 227. 111 Mass. 407.

10. Fines and forfeitures imposed by chapter eighteen of General Statutes, except in cases otherwise provided for, may be recovered by complaint or indictment to the use of the commonwealth, or by action of tort to the use of the town where the offence is committed.

Fines and forfeitures.
G. S. c. 18, § 80.

11. In all prosecutions before a police court or justice of the peace, under the by-laws of a city or town, the city solicitor, or other person appointed by the board of aldermen or selectmen of such city or town, may enter a *nolle prosequi*, or do any other matter or thing which may be done by a district attorney in criminal prosecutions.

Prosecutions under by-laws may be discontinued by order of board of aldermen, etc.
G. S. c. 172, § 20.
106 Mass. 230.

12. The police court¹ of Boston has jurisdiction of all offences against the by-laws and ordinances of the city.

Police court jurisdiction.
G. S. c. 3, § 7, c. 21.
116, § 10.
120, § 40.

13. By an act passed June 17, 1817, making certain provisions respecting weights and measures, "and for the more easy recovery of fines and penalties within the town of Boston," it was provided: That all fines, forfeitures, and penalties, accruing within said Boston, under the said act, or for the breach of any by-law which was then in force, or which might thereafter be duly enacted and made, might be recovered by indictment, information, or complaint, in the name of the commonwealth, in any court competent to try the same; and that all fines so recovered and paid should be appropriated to the uses for which the same were then by law ordered to be applied.²

How fines, etc., shall be recovered and appropriated.
1817, c. 50, § 3.
But see G. S. c. 26, § 50.
16 Pick. 504.

ORDINANCE.³

SECTION 1. All the by-laws of the city shall be denominated ordinances, and the enacting style shall be, "Be it ordained by the aldermen and common

Enacting style of city ordinances.
Sept. 16, 1850.

¹ Now the municipal court.

² This provision was not repealed by the incorporation of the city. The city charter did not annul the rights and privileges of the town of Boston. It only conferred on the then existing corporation a new name, with additional powers. *Commonwealth vs. Worcester*, 3 Pick. 474. A right of appeal was also reserved in this statute, which is no longer applicable; different provisions having since been made upon the subject. For special provisions, as to public health, see title "Health," p. 387.

³ An ordinance in relation to the ordinances and by-laws of the city, passed September 16, 1850, and December 28, 1854.

Sept. 16, 1850.

council of the city of Boston, in city council assembled, as follows."

Ordinances to be examined, enrolled, and recorded.
Ibid.

SECT. 2. All ordinances of the city shall be recorded at length by the city clerk in a book kept for that purpose, previous to which they shall be examined by a joint standing committee of the city council on ordinances, who shall certify on the backs of the originals that they are rightly and truly enrolled.

Ordinances and the orders of board of aldermen to be published.
Ibid.

SECT. 3. The ordinances of the city council, and the rules and regulations of the board of aldermen, shall be published and promulgated by inserting the same two weeks successively in the newspapers published in the city of Boston, wherein are printed the laws of the commonwealth for the time being, and in such other of the newspapers published and printed within the city, as the city council may designate; but this and the second section are directory merely, and a failure to comply with the same shall not affect the validity of any ordinance, or of any rules and regulations.

This provision to be directory merely.

Fines to inure to the use of the city except, etc.
Dec. 28, 1854.

SECT. 4. All fines and penalties for the violation of any of the ordinances of the city council, or any of the rules and regulations of the board of aldermen, when recovered, shall inure to the use of the city, and shall be paid into the city treasury, except in those cases where it may be otherwise provided by the acts of the legislature, or the ordinances of the city.

OVERSEERS OF THE POOR.¹

STATUTES.

1. By an act passed April 25, 1772, after reciting in a preamble that many charitably disposed persons have given and bequeathed considerable sums of money and other interest and estate to the poor of the town of Boston, and their use, and many other persons were well inclined to make charitable donations to the same good purpose, but the overseers of the poor of the said town not being incorporated, the good intentions of those who had made, and those who inclined to make, such charitable donations, had been either wholly frustrated or not carried into full effect, it was enacted: That the overseers, for the time being, of the poor of the town of Boston, in the county of Suffolk, and province of the Massachusetts bay, be created, made, erected, and incorporated

Incorporation of
the overseers of
the poor.

1772, April 23
and 25, § 1.

22 Pick. 122.

See § 14.

¹ The legislature has, by various acts, transferred a large portion of the powers and duties of the overseers of the poor of Boston which they formerly possessed, to the directors of the house of industry, and by the act of 1857, c. 35, these powers and duties are transferred to "the board of directors for public institutions," who now perform in Boston most of the duties imposed by the General Statutes upon overseers of the poor in the various towns. The overseers of the poor of Boston, in practice, furnish "out-door relief," and may send paupers to the house of industry. When received there, they come under the charge of the above-named directors. The overseers of the poor in the town of Boston were regularly incorporated for certain charitable purposes by the legislature in 1772, and it has been judicially held that the provision in the city charter, relative to overseers of the poor, was a continuance of the corporation so created in 1772, and not a dissolution or suspension of it. Overseers of the poor of Boston *vs.* Sears, 22 Pick. 122 (1839). For change in the organization of the board of overseers, see act 1864, c. 128, *post*, §§ 13, 18.

The overseers of the poor, in their corporate capacity, continue to possess and exercise all the powers granted, and are subject to all the duties enjoined, by the several acts of May 25, 1772; 1802, c. 144; 1813, c. 171, which are seen in the text. See "House of Industry," and "House of Reformation," p. 481. For the general powers of overseers of the poor, see "Paupers," p. 558.

For an account of the trust funds controlled by the overseers, see "Manual of the Overseers of the Poor," published in 1866, and the annual reports of the city auditor.

1772, April 23
and 25, §1.

Money and
estates given,
devised, etc.,
for the use of
the poor, vested
in said corpora-
tion.

Ibid. § 2.

Proviso, that
they shall not
hold more than
£60,000.

Shall have per-
petual suc-
cession.
Ibid. § 3.
May hold real
estate not ex-
ceeding £500 by
the year.

into a body politic, by the name of "The overseers of the poor of the town of Boston, in the province of the Massachusetts bay, in New England," and that they and their successors in said office have perpetual succession by said name.

2. That all and singular sum and sums of money, interest, and estate, real or personal, of what name or nature soever heretofore given, or at any time hereafter to be given, granted, bequeathed, or devised, by any way or means whatsoever, to the poor of the town or to their use, not exceeding the sums and value in this act hereafter mentioned, be and the same hereby is and shall be to all intents and purposes vested in the same overseers, and their said successors, in their said corporate capacity; and they are hereby enabled in the same capacity to receive, manage, lease, let, and dispose of the same according to their best discretion, to and for the use and benefit of the poor of the said town: *provided, always*, that the said overseers shall not be able to receive or be capable of having or holding any moneys or personal estate of any kind or nature whatsoever, at any time above and beyond the sum and amount of sixty thousand pounds, lawful money of this province,¹ accounting and reckoning the whole moneys and value of all the personal estate, personal securities, and choses in action which they shall own or be vested withal in their corporate capacity together, and that all gifts and bequests of money or personal estate of any kind made to the said corporation, or which by the tenor of this act they might take or be vested with, shall be utterly void at all times hereafter when their whole stock in moneys, personal securities, or choses in action and personal estate which the said corporation shall have, own, and be vested with the property of, shall, taken reckoned together, amount to the said sum of sixty thousand pounds.

3. That the said overseers, and their successors in said office, by the name aforesaid, have a perpetual succession, by that name, to sue or be impleaded; by its said corporate name to purchase lands and hold them, not exceeding the sum of five hundred pounds, lawful money, by the year; and to manage, lease, bargain, and sell, or otherwise dispose of all or any part thereof, and do all acts as natural persons may, as from time to time the said cor-

¹ See § 18, p. 551, *post*.

poration shall judge best for the benefit, advantage, and use of said poor. 1772, April 23 and 25, § 3.

4. That the said corporation shall have a common seal and power, and said corporation is hereby authorized to make by-laws and private statutes and ordinances, not repugnant to the laws of the land, for the better government of the said corporation and its finances; to choose a treasurer, clerk, and other subordinate officers, as from time to time shall be found necessary, and all or any of them again at pleasure to displace. Shall have a common seal, and may make by-laws, etc. Ibid. § 4.

5. That all instruments which said corporation shall lawfully make by the name aforesaid and sealed with their common seal, and all acts done or matters passed upon by the consent of a major part of the said overseers for the time being, shall bind said corporation and be valid in law. Instruments made and acts done shall be binding. Ibid. § 5.

BOYLSTON'S CHARITABLE DONATIONS.¹

6. By an act passed February 3, 1803, it was enacted: That Oliver Wendell, William Cooper, Ebenezer Storer, and William Smith, all of Boston, and John Pitts, of Tyngsborough, in the county of Middlesex, esquires, and the survivors and survivor of them, together with the overseers of the poor of the town of Boston, for the time being, and their successors, and after the decease of the said Oliver Wendell, William Cooper, Ebenezer Storer, William Smith, and John Pitts, the said overseers of the poor of the town of Boston for the time being, and their successors forever, are incorporated into a body politic, by the name and title of the trustees of John Boylston's charitable donations for the benefit and support of aged poor persons, and of orphans and deserted children, and by that name and title shall have perpetual succession. Incorporation of the trustees of John Boylston's charitable donations. 1802, c. 44, § 1.

7. All the bequests,² devises and donations made and granted by John Boylston, late of Bath, in the kingdom of Great Britain, deceased, for the purposes above mentioned, be and they hereby are vested in the said corporation, to be held and disposed of by them conformably to the directions of the said will. And the said Bequests, etc., made by John Boylston vested in said corporation. Ibid. § 2.

¹ For an account of the Sears fund, see City Doc. 74, 1875.

² See John Boylston's will, Suffolk Probate Court, vol. 94, p. 17.

1802, c. 44, § 2.

corporation shall insert among their records a copy of this act, and also of all the clauses of the said last will and testament which have relation to the said two charitable donations for the benefit of aged poor persons, and for the support of orphans and deserted children; and in the management and disposal of the funds granted in said will, the said corporation shall conform to and be governed by the directions therein contained.

Said corporation to have perpetual succession, and to hold real and personal estate.
Ibid. § 3.

8. The said corporation shall have a perpetual succession by the name and title aforesaid, to sue or be impleaded; to purchase and hold lands, or other real estate, not exceeding the value of three thousand dollars, by the year; to hold personal estate not exceeding the value of sixty thousand dollars;¹ and to manage, lease, bargain, and sell, or otherwise dispose of, all or any part thereof, subject to the directions of the said will; and to do all acts as natural persons may do, as the said corporation from time to time shall judge best to carry into effect the charitable intentions of the said will; and the real or personal estate which the said corporation are hereby empowered to hold shall not be considered as a part of that which the overseers of the poor of the town of Boston are already empowered by their former act of incorporation to hold; but as altogether distinct and separate from the same.

Shall have a common seal and may make by-laws, etc.
Ibid. § 4.

9. The said corporation shall have a common seal, with power to break and alter the same; and said corporation is hereby authorized to make by-laws and private statutes and ordinances, not repugnant to the laws of the land, for the better government of said corporation and its finances; to choose a treasurer, clerk, and other subordinate officers, as from time to time shall be found necessary, and all or any of them again at pleasure to displace.

Instruments and acts shall be binding.
Ibid. § 5.

10. That all instruments which said corporation shall lawfully make by the name aforesaid, and sealed with their common seal, and all acts done or matters passed upon by the consent of a major part of the members of said corporation, shall bind the said corporation and be valid in law.

Corporation authorized to bind out poor persons, orphans, etc.

11. By an additional act, passed February 26, 1814, the last-mentioned corporation are authorized and empowered to bind out in virtuous families, or to reputable trades, or useful arts or occu-

¹ See § 18, p. 551, *post*.

pations, such poor persons, orphans, or deserted children, as ^{1813, c. 171.} receive, or may hereafter receive, the benefit of the said Boylston's charitable donations, until they arrive at the age of twenty-one years, in such manner as to the said corporation may seem expedient; and for this purpose shall have authority to establish any rules and regulations, and enter into any indenture or covenant relative to such objects, not repugnant to the laws of this commonwealth, as the said corporation may deem necessary or expedient.

BOSTON ASYLUM.

12. The power recognized in the act to incorporate the Boston ^{Power of sur-} asylum for indigent boys (1813, c. 153), of the parent or guardian ^{rendering indi-} of any indigent boy or boys, to surrender in writing him or them ^{gent boys to the} to the managers of said asylum, for the purposes mentioned in ^{Boston asylum} said act, shall, in case said boy or boys have no parent or guardian ^{shall be exer-} within the city of Boston, nor legal settlement in any other town ^{cised by the} in this commonwealth, be possessed and exercised by the overseers ^{overseers of the} of the poor of the city of Boston.¹ ^{poor. 1823, c. 53.} ^{But see 1835,} ^{c. 28, § 4.}

PRESENT ORGANIZATION OF OVERSEERS.

13. By an act passed April 2, 1864, it was provided that the ^{Overseers of} overseers of the poor in the town of Boston, incorporated on the ^{poor; duties,}

¹ The power referred to in the text is as follows: "They shall likewise have authority, at their discretion, to take into their asylum such indigent boys belonging to the town of Boston as they may judge to be suitable objects of charity, to enjoy the benefit of the institution; and also to accept a surrender in writing by the father, or where there is no father, by the mother or guardian of any indigent boy as aforesaid, to the care and direction of said society, and to bind out in virtuous families, or to reputable trades or occupations, or to educate in such manner as they may deem beneficial, until the age of twenty-one years, any such indigent boy or boys, thus surrendered, or any such boys who, being destitute of parents within this commonwealth, shall have been relieved and supported by the society: *provided*, that any parent whose child or children shall have received relief, or have been bound out as aforesaid, during the absence of such parent from this state, shall have liberty on his or her return to the state, to receive and withdraw such child or children on paying to the treasurer of the society the expense incurred in his or their relief and support as aforesaid."

For enactments respecting the Boston asylum and farm school, see acts 1813, c. 153; 1823, c. 53; 1833, c. 135; 1835, c. 28; 1838, c. 16; 1854, c. 71.

rights, obligations, etc.
1864, c. 128, § 1.

twenty-fifth day of April, in the year one thousand seven hundred and seventy-two, shall be known and called by the name of "The overseers of the poor in the city of Boston," and as such shall continue to hold and possess all the property, and be entitled to all the rights and privileges, and be subject to all the duties, liabilities and obligations, which now belong or appertain to said corporation, whether as successors of the corporation above mentioned, or as successors of the corporation or body politic incorporated by the forty-fourth chapter of the acts of the year eighteen hundred and two, by the title of "The trustees of John Boylston's charitable donations, for the benefit and support of aged poor persons, and of orphans and deserted children," including the faithful administration and execution of all the trusts, bequests, legacies, endowments, and charities confided to them, which have been heretofore, or shall hereafter be, accepted by them.

How composed
and elected.
Vacancies.
Ibid. § 2.

14. The said overseers of the poor in the city of Boston shall consist of twelve persons, residents of the city, and be elected by the city council of said city of Boston, by concurrent vote, in the following manner, within sixty days next after this act shall take effect: The said city council shall elect four persons to hold their office until the first Monday in April in the year eighteen hundred and sixty-seven, and until other persons are elected in their places; four persons to hold their office until the first Monday in April in the year eighteen hundred and sixty-six, and until others are elected in their places; and four persons to hold their office until the first Monday in April in the year eighteen hundred and sixty-five, and until others are elected in their places: and thereafterwards, annually, on the first Monday in February, or within sixty days thereafter, four persons to hold their office for the term of three years from and after the first Monday in April next following such elections, respectively, and until other persons are elected in their places. Vacancies occurring in said corporation, from any cause, may be filled by said city council, in like manner, at any time; and the person elected to fill any vacancy shall hold his office during the term for which his predecessor was elected. The city council shall also have power, at any time, for cause, to remove either of said overseers from office.

15. The persons so first elected as overseers of the poor in the city of Boston, shall meet and organize on the first Monday of the month succeeding their election,¹ and those thereafterwards elected shall meet for that purpose on the first Monday in April of each year. They shall choose a chairman from their own number, and a treasurer, secretary, and such subordinate officers as they may deem expedient, and shall define their duties and fix their respective salaries.

Organization of
the board.
1864, c. 28, § 3.

16. Said overseers shall render such accounts and reports of their expenditures, acts, and doings, as may be required by the city council, and the same shall be audited and allowed, if according to law, in such manner as the city council shall from time to time determine.

To report to the
city council.
Ibid. § 4.

17. No one of said overseers, nor any individual in their employ, shall be interested in a private capacity, directly or indirectly, in any contract or agreement for labor or for articles furnished by direction of said overseers, unless the same be expressly authorized by a recorded vote of the board.

Not to be inter-
ested in pur-
chases or con-
tracts.
Ibid. § 6.

18. By an act passed May 8, 1868, the overseers of the poor in the city of Boston, a corporation duly established by law, were authorized to hold real and personal estate not exceeding in value three hundred thousand dollars, in addition to the amount authorized by an act passed on the twenty-fifth day of April, in the year seventeen hundred and seventy-two, entitled "an act for incorporating the overseers of the poor in the town of Boston;" and the overseers of the poor in the city of Boston, acting by virtue of the sixth chapter of the acts of the year eighteen hundred and three, entitled an "act to incorporate Oliver Wendell and others, together with the overseers of the poor of the town of Boston," for the time being, by the name and title of "The trustees of John Boylston's charitable donations for the benefit and support of aged poor persons and of orphans and deserted children," and were further authorized to hold personal estate not exceeding the value of one

Increase of per-
sonal estate.
1868, c. 183, § 1.
1875, c. 73.

¹ The overseers of the poor provided for in this act were duly chosen by the city council June 16, 1864, and were organized on Monday, July 4, 1864, by the choice of Robert C. Winthrop as chairman, John W. Warren, M. D. treasurer, and John Pratt, secretary.

1868, c. 183, § 1. hundred thousand dollars in addition to the amount authorized by
 1875, c. 73. said last-named act.

CHARLESTOWN POOR'S FUND.

Trustees of
 Charlestown
 Poor's Fund.
 1825, c. 40, § 1.

19. The mayor and aldermen, and the deacons of the First Congregational church, the Baptist church, the Universalist church, and the New church, all of Charlestown, for the time being, and their successors in the said offices of mayor and aldermen and deacons, be and they hereby are made a body politic and corporate, forever, by the name of the trustees of the Charlestown poor's fund, for the purpose of managing certain donations given and bequeathed at different periods of time, by Richard Russell, Esq., Capt. Richard Sprague, Mr. Thomas Call, and Richard Devens, Esq., all formerly inhabitants of said Charlestown, and such other funds as may come into their hands for like purposes; and the said trustees, by the name aforesaid, may sue and be sued, prosecute and defend suits, with power of substitution, and may have a common seal, and the same may alter and renew at pleasure; and the two senior deacons of all regularly organized religious churches, which may hereafter be constructed in said town of Charlestown, shall be considered as members of said board of trust: *provided*, that whenever any new society shall be constituted in said town, the board of trust shall be composed of the mayor and aldermen and two senior deacons from each church, for the time being, and their successors in said offices.

Treasurer, by-
 laws, etc.
 Ibid. § 2.

20. The said trustees may choose a treasurer and other necessary officers, and may adopt all needful by-laws and regulations for the government of the corporation, not repugnant to the constitution and laws of this commonwealth, and the same may alter as they may find expedient and necessary.

Power to receive
 and hold money,
 etc.
 Ibid. § 3.

21. The said trustees shall have full power to receive and hold all money, securities, and other estate, real or personal, now constituting the said poor's fund, and also to receive and hold all gifts, grants and donations, real and personal, that may hereafter be made to increase the said fund, and the same to manage and put on interest, and to apply the income thereof, annually, for the relief of the poor of said town, forever, conformable to the true intent and meaning of the several donors.

22. The said trustees shall have power to make sale of any of their property, real or personal, purchased or given, as they shall judge most for the interest of their said trust, unless that which shall be given be expressly otherwise appropriated by the donor; and all moneys, arising from such sale, and the subsequent income, shall be applied to the same use to which the property sold and the income thereof were respectively applicable; and all deeds, conveyances, contracts and other instruments, duly authorized by the board, at a regular meeting, and signed by the president, and attested by the secretary, shall be good and valid.

Power to sell property.
1825, c. 40, § 4.

23. The act to unite the city of Charlestown to the city of Boston provided that the trustees of the poor's fund in the town of Charlestown should continue to manage their funds and disburse the income thereof according to the terms of their trust, and that the members of the two branches of the city council for the time being, residing in said present limits of Charlestown, should, together with the senior deacons of the religious societies in said present limits of Charlestown, be the said trustees of the poor's fund.

Change of Trustees on annexation to Boston.
1873, c. 286, § 12.

ORDINANCES.¹

SECTION 1. In the month of January, in each year, there shall be appointed a joint committee of the city council, to be called the committee on the overseers of the poor.

Committee on overseers appointed.
June 15, 1864.

SECT. 2. All matters within the control and jurisdiction of the city council, relating to the overseers of the poor, and to paupers, and poor and destitute persons, and the city temporary home, shall be referred to said committee, unless otherwise ordered by the city council, and said committee shall perform such duties as are hereinafter provided for.

Duties of said committee.
Ibid.

¹ An ordinance relating to the overseers of the poor, passed June 15, 1864; amended November 26, 1867, April 11, 1868, March 5, 1869, December 22, 1871.

Overseers to
keep books.
Form of books
for invested
funds.
June 15, 1864.

SECT. 3. The overseers of the poor shall cause to be kept, in a neat and methodical style and manner, a complete set of books, under the direction of said committee, wherein shall be stated, in detail, among other things, the mode in which all funds in their hands are invested and how they are secured, the amount and dates of all receipts and expenditures, and to whom and from what funds all payments of money are made, and they shall preserve in a safe and careful manner all papers, property, evidences of property, vouchers, and other things entrusted to, and deposited with them. They shall also state and enter in said books whatever other particulars said committee shall direct relating to any property or moneys in their hands, entrusted to them or expended under their direction, so that said books may exhibit clearly, completely, and in detail, all matters connected therewith.

Books may be
examined and
inspected by
city council.
Ibid.

SECT. 4. All said books, papers, and property, and the book or books hereinafter provided for, may at any time be inspected or examined by the mayor, by said committee, or by any committee or person whom the mayor, the board of aldermen, or the common council, may direct or appoint to inspect and examine the same.

Books to be
kept with full
accounts of
applicants.
Form of books.
Ibid.

SECT. 5. The overseers shall also cause to be kept, in a neat and methodical style and manner, another book, or set of books, under the direction of the said committee, wherein shall be stated, among other things, the name, residence for as long a period as

can be conveniently ascertained, birthplace, occupation, property or means of support, name of the husband or wife, number, names, residences, and occupation of children, if any, and, so far as can be conveniently ascertained, and shall be of importance for determining settlements or other matters, the names and residences of, and other information in regard to, the ancestors of every person to whom relief or assistance may be given or refused, whether such persons are married, or not, the nature and amount of such relief or assistance, and the cause or ground upon which the same is given or refused, and the source or fund from which it is taken or derived, and all other particulars or information which it is for the public interest to preserve, or which said committee may direct or request; so that said book or books may present, in a clear, complete, and detailed manner, and in such a form as to be readily found, all information which may be of value to the city or the commonwealth, in regard to persons to whom relief is given or refused; and said overseers shall also cause to be kept a full and complete record of all applications, by women and children, for admission to the "Temporary Home," so called, containing the names of the applicants, the grounds upon which admission is granted or refused, and any other information which it is for the public interest to preserve.

June 15, 1864.

Dec. 22, 1871.

SECT. 6. Said overseers shall, on the first Mondays of August, November, February and May, in each year, present to the city council a brief and condensed report of their doings, receipts and expenditures,

Overseers to
report to city
council
quarterly.
June 15, 1864.
April 11, 1863.

June 15, 1864.
April 11, 1868.

during the three months ending with the last day of the preceding month, showing concisely and in such form and with such classification as they may deem expedient, or said committee may direct, their receipts and expenditures, and the number and description of the persons relieved, without naming them, and the kind of relief given.

Overseers to
make an annual
report.
June 15, 1864.
Nov. 26, 1867.

SECT. 7. On the first Monday of May, in each year, they shall submit a report of their doings, receipts and expenditures, for the year ending with the thirtieth day of the preceding April, containing, under some convenient classification, the facts and information comprised in their four preceding quarterly reports, together with a statement of all moneys, property or investments, remaining in their hands, and such information and suggestions as they may deem it expedient to present to the city council, or may be requested by the mayor or city council, or by said committee, to furnish, and they shall, whenever requested by the mayor or city council, communicate such information as may be desired by either.

Committee shall
monthly
examine books
and semi-annu-
ally examine
investments.
Ibid.

SECT. 8. On the second Monday of each month said committee shall examine all said books and ascertain whether the same have been kept in conformity with the provisions hereof, whether all payments and expenditures for the month ending on the last Monday of the preceding month have been legally made and are properly vouched, and whether relief and assistance have been legally granted or refused. At least twice in each year, once in the month of January,

and once in the month of June, said committee shall examine and investigate the condition and investment of all property entrusted to, and deposited with the overseers. And if, on any of such examinations, it appears that any payment or expenditure has been illegally made, or is not properly vouched, or that any assistance or relief has been illegally granted or refused, or that due care is not taken in regard to the management, preservation, or investment of said property, or that all said books are not properly kept, according to the provisions hereof, said committee shall thereupon report the same to the city council for their action, and may make such reports and suggestions upon any matter as they shall deem expedient.

June 15, 1864.
Nov. 26, 1867.

SECT. 9. The overseers of the poor shall have charge of the charity building and temporary home on Chardon street, and shall have power to make and enforce all such proper rules and regulations as they may deem expedient in relation thereto. They shall, from time to time, determine what societies are to be permitted to occupy the building, and on what terms and for what length of time they may occupy it; and what proportion of the current expenses of managing, heating and lighting the same, and of all other expenses, except rent, shall be paid by each. Such occupants may be removed at the pleasure of said overseers; but no such rule or regulation shall be in force after the same is disapproved by the city council, and no assignment of rooms shall be made without the concurrence of the committee on the overseers of the poor.

Overseers to
have charge of
charity building
and temporary
home, and
authority to
make rules and
regulations.
March 5, 1869.

PAUPERS.

STATUTES.

DUTY OF CITIES AND TOWNS.

Town to support poor.
G. S. c. 70, § 1.

Powers and duties of overseers of the poor.

Ibid. § 2.

1 Pick. 123.

20 Pick. 267.

29 Maine, 313.

7 N. H. 298.

7 Allen, 285.

8 Allen, 73.

14 Allen, 30.

106 Mass. 262.

Same subject.
G. S. c. 70, § 3.

1. Every city and town shall relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof.¹

2. The overseers of the poor shall have the care and oversight of all such poor and indigent persons, so long as they remain at the charge of their respective cities or towns, and shall see that they are suitably relieved, supported, and employed, either in the workhouse or almshouse, or in such other manner as the city or town directs, or otherwise, at the discretion of said overseers.² They may remove to the almshouse such children as are suffering destitution from extreme neglect of dissolute or intemperate parents or guardians.

3. The overseers of the poor shall have the same power and authority over persons placed under their care, which directors or masters of workhouses have over persons committed thereto.

DUTY OF KINDRED.

Certain kindred to support, etc.
Ibid. § 4.

10 Cush. 279.

3 Allen, 515.

6 Allen, 585.

8 Allen, 531.

Superior court may assess kindred for past expenses.

G. S. c. 70, § 5.

Quincy's Mass.

reports. 12, 66.

3 Mass. 436.

5 Mass. 244.

5 Gray, 28.

10 Cush. 3, 239.

11 Cush. 24.

10 Allen, 68.

4. The kindred of such poor persons,³ in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living in this state, and of sufficient ability, shall be bound to support such paupers, in proportion to their respective ability.

5. The superior court, in the county where any one of such kindred to be charged resides, upon complaint of any city, town, or kindred, who shall have been at expense for the relief and support of such pauper, may, on due hearing, assess and apportion upon such of the kindred as they shall find to be of sufficient ability, and, in proportion thereto, such sum as they shall deem reasonable for or towards the support of the pauper to the time of such assessment; and may enforce payment thereof by execution in

¹ 9 Met. 495; 5 Gray, 28; 6 Gray, 416, 420; 3 Allen, 515; 5 Allen, 576; 7 Allen, 284; 106 Mass. 262.

² Concerning the authority of the overseers to contract debts for supplies for the support of paupers, see 8 Allen, 73.

³ For definition of "poor persons," see 10 Cush. 239.

common form: *provided*, that such assessment shall not extend to any expense for relief afforded more than six months previous to the filing of the complaint. G. S. c. 70, § 5.

6. The court may further assess and apportion, upon said kindred, such weekly sum as they shall deem sufficient for the future support of the pauper, to be paid quarter-yearly until the further order of court; upon application, from time to time, of the city, town, or kindred, to whom the same is ordered to be paid, the clerk of said court shall issue and may renew an execution for the arrears of any preceding quarter. May also assess for future expenses. Ibid. § 6.

7. When the court adjudges two or more of the kindred of a pauper to be of sufficient ability to contribute to his support, they shall tax no more costs against any one respondent than is occasioned by his default or separate defence. Costs, how taxed. Ibid. § 7.

8. The court may further order with whom of such kindred, that may desire it, such pauper shall live and be relieved, and such time with one, and such time with another, as they shall deem proper, having regard to the comfort of the pauper as well as the convenience of the kindred. Court may order with whom pauper shall live. Ibid. § 8.

9. The complaint made, as provided in section five, shall be filed in the clerk's office, and a summons shall be thereupon issued requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer qualified to serve civil process between the parties, and served like an original summons, fourteen days at least before the sitting of the court to which it is returnable. Proceedings on complaints. Ibid. § 9.

10. Upon suggestion that there are other kindred of ability not summoned in the original process, they may be summoned, and, after due notice, whether they appear or are defaulted, the court may proceed against them in the same manner as if they had been summoned upon the original complaint. Other kindred than those named may be summoned. Ibid. § 10.

11. The court may take further order from time to time in the premises, upon application of any party interested, and may alter such assessment and apportionment according to circumstances; and upon all such complaints they may award costs to either party as justice requires. Court may make new orders. Ibid. § 11. 10 Allen, 68.

12. The treasurer of every savings bank and institution for savings shall, upon the written request of any overseer of the poor of any city or town in this state, signed by him, inform such overseer of the amount, if any, deposited in the corporation of Overseers of poor to be notified, upon request, of deposits to the credit of paupers.

1876, c. 204, § 25. which he is treasurer, to the credit of any person named in such
 1 Allen, 25. request, who may be, at the time, a charge upon the state, or any
 3 Allen, 515. city or town therein, as a pauper; and if he unreasonably refuses
 to give the information, or wilfully renders false information, he
 shall forfeit fifty dollars for every such offence to the use of the
 city or town upon which such pauper is a charge, or to the state,
 if the pauper is a charge upon the state.

RELIEF OF STRANGERS.

Overseers may 13. Said overseers, in their respective places, shall provide
 provide for im- for the immediate comfort and relief of all persons residing or
 mediate relief found therein, having lawful settlements in other places, when
 of strangers, etc. they fall into distress and stand in need of immediate relief, and
 G. S. c. 70, § 12.* until they are removed to the places of their lawful settlements;
 the expenses whereof, incurred within three months next before
 notice given to the place to be charged, as also of their removal
 or burial in case of their decease, may be recovered by the place
 incurring the same against the place liable therefor, in an action
 at law, to be instituted within two years after the cause of action
 arises, but not otherwise.¹

Recovery to es- 14. A recovery in such action shall bar the place against which
 tablish settle- it shall be had from disputing the settlement of such pauper with
 ment. the place so recovering, in any future action brought for his sup-
 G. S. c. 70, § 13. port.
 103 Mass. 117,
 119.

* 3 Mass. 436; 4 Mass. 273; 5 Mass. 86, 325, 434; 6 Mass. 501; 8 Mass. 104; 10 Mass. 411; 11 Mass. 483, 327; 12 Mass. 262, 307, 316, 355, 452; 13 Mass. 501, 547; 14 Mass. 184, 186; 15 Mass. 248; 16 Mass. 102, 110; 1 Pick. 123, 470; 2 Pick. 341; 4 Pick. 358; 5 Pick. 190; 8 Pick. 388, 563; 10 Pick. 22, 150; 12 Pick. 1; 15 Pick. 19; 17 Pick. 68; 23 Pick. 159; 4 Met. 178, 278, 433; 8 Met. 564; 9 Met. 589; 13 Met. 192; 2 Cush. 52; 1 Gray, 515; 5 Gray, 390; 11 Gray, 107; 13 Gray, 586; 16 Gray, 295; 1 Allen, 23; 3 Allen, 517; 4 Allen, 574; 5 Allen, 576; 7 Allen, 284; 8 Allen, 73; 9 Allen, 134, 207; 103 Mass. 117.

¹In addition to the statute remedy, it has been settled by the supreme court, that, when the overseers of the poor relieve the wants of the wife whose husband has a legal settlement in another town, an account lies at common law for the town whose overseers furnished the relief, against the husband, notwithstanding the statute remedy against the town wherein he is settled. *Inhabitants of Hanover vs. Turner*, 14 Mass. 227 (1817). See, also, *City of New Bedford vs. Chace*, 5 Gray, 28 (1855), and *Inhabitants of Monson vs. Williams*, 6 Gray, 416 (1856).

15. When a person is supported in a place other than that in which he has his settlement, the place liable for his support shall not be required to pay therefor more than at the rate of two dollars a week: *provided*, that the place so liable shall cause the pauper to be removed within thirty days from the time of receiving legal notice that such support has been furnished.

Liability when pauper is removed, etc.
G. S. c. 70, § 14.
1873, c. 213.
4 Pick. 45.
7 Pick. 155.
21 Pick. 349.
13 Met. 198.
8 Cush. 371.
11 Gray, 107.

16. The overseers of the poor of each place shall also relieve, support, and employ, all poor persons residing or found therein, having no lawful settlements within this state, until their removal to a state almshouse, and in case of their decease shall decently bury them; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support, in the manner herein before provided; and if, in case of their burial, the expense thereof is not paid by such kindred, there shall be paid, from the treasury of the commonwealth, ten dollars for the funeral expenses of each pauper over twelve years of age, and five dollars for the funeral expenses of each pauper under that age.¹

Overseers shall support, and in case of decease bury, indigent strangers. Compensation therefor.
G. S. c. 70, § 15.
1867, c. 97, § 1.

TEMPORARY AID.

17. The city council of the city of Boston may appropriate out of any funds in its treasury not otherwise appropriated, or raise by taxation and appropriate, such amounts as they may by vote determine for temporary aid to the poor; the same to be expended in such manner as they may by vote determine; but the amount thus appropriated in any one year shall not exceed one fifteen-hundredth of one per cent. of the valuation of said city for the current year; and the city council shall keep a separate account of all money appropriated under this act.

Temporary relief for the poor of Boston.
1874, c. 374.

18. Every city and town shall be held to pay any expense necessarily incurred for the relief of a pauper therein by any person who is not liable by law for his support, after notice and request made to the overseers thereof, and until provision is made by them.²

Towns liable to individuals.
G. S. c. 70, § 16.

¹ For the expense of burying persons who die in prisons, see "House of Correction and Jail," *ante* p. 460.

For the disposition of bodies of such persons dying in almshouses, etc., as are required to be buried at the public expense, see "Health," *ante* p. 398.

² 2 Mass. 547, 564; 5 Mass. 244, 328; 15 Mass. 286; 4 Pick. 101; 7 Pick. 333; 10 Pick. 24; 18 Pick. 470; 19 Pick. 473; 20 Pick. 506; 7 Met. 216; 9 Met. 492; 4 Cush. 199; 6 Cush. 399; 10 Cush. 3; 8 Allen, 73; 9 Allen, 134; 14 Allen, 80; 105 Mass. 533; 116 Mass. 353.

VAGRANTS REQUIRED TO LABOR.

Vagrants may be required to perform labor in return for food and lodging furnished by overseers, etc.

1875, c. 70.

19. The overseers of the poor of any town or city, or keepers of almshouses acting under their directions, may require any person, not a resident of said town or city, applying to them for and receiving from them food and lodging or either, in an almshouse or other place, to perform a reasonable amount of labor in return for such food and lodging, and may detain such person until the same is performed, but not beyond the hour of eleven in the forenoon of the day succeeding his application; and if any such person shall refuse or neglect when so required to perform such labor suited to his age, strength and capacity, or wilfully damage any of the property of such town or city in the charge of such overseers or other officers, he shall be deemed a vagrant within the meaning of the statutes relating to vagrants and vagabonds and may be prosecuted and punished in the manner provided by chapter two hundred and fifty-eight of the acts of the year eighteen hundred and sixty-nine, or as otherwise provided by law.

REMOVAL OF PAUPERS.

Paupers may be removed, etc.

G. S. c. 70, § 17.

8 Mass. 104.

6 Mass. 501.

5 Mass. 86.

23 Pick. 156.

4 Met. 433.

13 Met. 199.

5 Allen. 545.

9 Allen. 91.

102 Mass. 216.

105 Mass. 533.

103 Mass. 117.

117 Mass. 445.

Process in case of removals.

If a removal is not made or objected to by the town notified, then, etc.

G. S. c. 70, § 18.

1 Mass. 439, 518.

4 Mass. 180, 273.

8 Mass. 104.

10 Mass. 426.

17 Mass. 432.

17 Pick. 68.

19 Pick. 159.

23 Pick. 156.

4 Met. 433.

10 Cush. 408.

1 Gray. 515.

9 Allen. 91.

20. The overseers of any place may send a written notification, stating the facts relating to any person actually become chargeable thereto, to one or more of the overseers of the place where his settlement is supposed to be, and requesting them to remove him; which they may do by a written order directed to any person therein designated, who may execute the same.

21. If such removal is not effected by the last-mentioned overseers within two months after receiving the notice, they shall, within said two months, send to one or more of the overseers requesting such removal, a written answer, signed by one or more of them, stating therein their objections to the removal; and if they fail so to do, the overseers who requested the removal may cause the pauper to be removed to the place of his supposed settlement, by a written order directed to any person therein designated, who may execute the same; and the overseers of the place to which the pauper is so sent shall receive and provide for him; and such place shall be liable for the expenses of his support and removal, to be recovered in an action by the place incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

22. The notification and answer mentioned in the two preceding sections may be sent by mail; and such notification or answer, directed to the overseers of the poor of the place intended to be notified or answered, postage prepaid, shall be deemed a sufficient notice or answer, and shall be considered as delivered to the overseers to whom it is directed, at the time when it is received in the post-office of the place to which it is directed and in which the overseers reside.

Effects of notifications, etc., sent by mail.
G. S. c. 70, § 19.

23. Whoever brings into and leaves any poor and indigent person in any place in this state, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such place with his relief or support, shall forfeit a sum not exceeding one hundred dollars for each offence, to be recovered in an action of tort to the use of such place.¹

Penalty for leaving paupers where not settled, etc.
Ibid. § 20.
2 Greenl. 5.
11 Mass. 441.
16 Mass. 393.
1 Pick. 465.
2 Pick. 28.
21 Pick. 83.
102 Mass. 214.
105 Mass. 336.
110 Mass. 210.

24. Upon the death of a pauper who, at the time of his decease, is actually chargeable to any place within this state, the overseers of the poor of such place may take possession of all his real and personal property; and if administration is not taken upon his estate within thirty days after his decease, the overseers may, in their own names, sell and convey so much thereof as may be necessary to repay the expenses incurred for the pauper. If any part of such property is withheld from said overseers, they may, in their own name, sue for and recover possession of the real estate, and shall have the same remedy for the recovery of the personal estate or its value, that an administrator might have in like case.

Overseers of poor may sell estate of deceased paupers, and apply proceeds to reimburse expenses.
G. S. c. 70, § 21.
6 Pick. 462.
1 Allen, 25.
3 Allen, 515.

25. In all actions and prosecutions founded on the preceding provisions of this chapter, the overseers of the poor of any place, or any person by writing under their hands appointed, shall appear, prosecute, or defend the same to final judgment and execution, in behalf of such place.

Overseers may prosecute, etc.
Ibid. § 22.

RETURNS TO BE MADE BY OVERSEERS OF POOR.

SECT. 26. The board of directors for public institutions of the city of Boston, and the overseers of the poor of all cities and towns, shall, in the year eighteen hundred and eighty-five, and in every

Overseers, etc., to return to secretary of commonwealth

¹ The provisions of this statute apply to public officers as well as private persons. 102 Mass. 214.

statement re-
specting pau-
pers.

G. S. c. 70, § 23.

1837, c. 194, § 1.

1841, c. 116, § 1.

1844, c. 146.

1848, c. 247, § 1.

1857, c. 35, 40.

1858, c. 46, § 1.

1875, c. 216.

tenth year thereafter, make out and return to the secretary of the commonwealth a statement of the paupers in such city or town as they were during the year ending on the last day of the month preceding; which return shall contain true and correct answers to the following inquiries:—

What number of persons have been relieved or supported by your town during the year ending September 30? Of those, how many have a legal settlement in your town? How many are foreign-born? How many of the foreign-born are from England and Ireland? How many state paupers have you sent to the state almshouses? How many of the poor assisted in your town or sent to state almshouses were foreigners? How many of your insane do you support in state lunatic hospitals? How many of your idiotic poor are in the state institution for educating idiots? Have you an almshouse? What number of acres of land is attached to your almshouse? What is the estimated present value of your almshouse establishment? Real estate? Personal? What number of persons have been supported in your almshouse during the whole or any part of the year? What is the average number supported in the almshouse? What is the average weekly cost of supporting each pauper in the almshouse? What number of persons have been inmates of your almshouse who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by the poor in your almshouse? How many persons, including their families, have you supported out of the almshouse during the whole or a portion of the year? What is the average weekly cost of supporting each pauper out of the almshouse? How many have you aided out of the almshouse? How many have you supported or relieved who were insane? How many who were idiots? What number of persons, relieved or supported during the year, in your town, have become dependent by reason of insanity or idiocy? What number of your poor, supported at the public charge, have been made dependent by intemperance in themselves? What number by intemperance in those who ought to have been their supporters? What is the total net amount of expense of supporting or relieving the poor in your town during the year, including interest on your almshouse establishment? How many are supported in your almshouse at the present time? How many are

supported out of the almshouse at the present time? How many G. S. c. 70, § 23.
1875, c. 216.
are assisted out of the almshouse at the present time?

They shall, at the same time, make correct returns of all children in such city or town under fourteen years of age who are supported at the public charge, specifying therein the name, age, and sex of each. And the secretary of the commonwealth shall furnish the board of directors for public institutions of the city of Boston, and the overseers of the poor of every other city and town, with blank forms of returns, which shall contain in substance the foregoing interrogatories.

27. It shall be the duty of overseers of the poor, in all the cities and towns of this commonwealth, to keep full and accurate records of the paupers fully supported, the persons relieved and partially supported, the travellers and vagrants lodged at the expense of said cities and towns, together with the amount paid for such support and relief. Overseers of
poor to keep
records.
1867, c. 209, § 1.

28. An annual return of the numbers of persons supported and relieved, as enumerated in the preceding section, with the cost of such support and relief, and a record of those fully supported, shall be made by the overseers of the poor to the secretary of the board of state charities during the month of April in each year, and shall be for the year ending on the thirty-first day of March preceding: *provided*, that, for the present year, said returns shall be made on or before the thirty-first day of May. In the year eighteen hundred and eighty-five, and in every tenth year thereafter, the returns provided for in section twenty-three, chapter seventy of the General Statutes [§ 26 of this digest], shall be made and transmitted by the overseers of the poor to the secretary of the board of state charities, during the month of April, and shall be for the year ending on the thirty-first day of March preceding. Return to be
made of number
of persons sup-
ported, etc., and
cost of support.
1875, c. 216.

29. If the overseers of any town or city shall refuse or neglect to comply with the requirements of this act [1867, c. 209], said town or city shall forfeit the sum of one dollar for each day's neglect, and the amount of such forfeiture shall be deducted from any sum to which said town or city may be entitled in reimbursement for relief of state paupers, as provided in chapters one hundred and sixty-two, of the acts of the year eighteen hundred and Penalty for neg-
lect.
1867, c. 209, § 3.

1867, c. 209, § 3. sixty-five [§§ 37, 38 and 39 of this digest], and two hundred and thirty-four, of the acts of the year eighteen hundred and sixty-six [§ 47 of this digest]; and in case no such reimbursement shall be due to said town or city, the forfeiture shall be deducted from any money which may be due such town or city from the state.

Returns to be made by overseers to visiting agent, concerning minor children supported by towns.
1871, c. 370, § 1.

30. The overseers of the poor of each city and town of this commonwealth shall make semi-annual returns to the visiting agent of the board of state charities, concerning all minor children above the age of four years who are supported at the expense of such city or town, in an almshouse or elsewhere, on the first day of January and July. Said returns shall be made in such form and shall contain such information respecting said minor children as may be prescribed by the board of state charities, and shall be forwarded to said agent on or before the tenth day of each month before mentioned.

Agent to visit, etc., all minors supported by towns.
Ibid. § 2.

31. The provisions of sections two and three of chapter three hundred and fifty-nine of the acts of the year eighteen hundred and seventy [not included in this digest], or other acts in addition thereto, in respect to children maintained wholly or in part by the state, and to the indenture of children from the state institutions, shall hereafter apply also to all minor child supported at the expense of any city or town: *provided*, that no such child shall be removed from any city or town without the consent of the overseers of the poor thereof.

Penalty for not making return.
G. S. c. 70, § 24.
1862, c. 112, § 4.

32. If the board of directors for public institutions of the city of Boston, or the overseers of the poor of any other city or town, refuse or neglect to make any of the returns as aforesaid, they shall forfeit a sum not less than fifty, nor more than one hundred dollars, for each offence; and the secretary of the commonwealth shall forthwith notify the district attorney of the district in which such directors or overseers reside, of such refusal or neglect, and he shall immediately prosecute for the same.

Secretary to prepare abstract of returns.

G. S. c. 70, § 25.

33. The secretary shall, as soon after the fifteenth day of October of each year as practicable, make out an abstract of the returns made to him, together with such explanatory remarks as he deems proper, and cause the same to be printed for the use of the legislature.

DISPOSITION OF DEAD BODIES OF PAUPERS.

34. When a coroner takes an inquest upon the view of the dead body of a stranger, or being called for that purpose does not deem it necessary, on view of such body, that an inquest should be taken, he shall cause the body to be decently buried, unless its dissection has been allowed by lawful authority; and if the coroner certifies that, to the best of his knowledge and belief, the person found dead is a stranger not belonging to this state, the expenses of burial and of the inquisition, if any is taken, and other necessary expenses, with the coroner's fees, shall be paid from the county treasuries if called for within one year from the time the account is audited, and the county treasuries shall be reimbursed from the state treasury for all sums so paid whenever a certificate of the county treasurer stating the amount actually paid out shall be filed with the state treasurer. In all other cases the expenses of the burial shall be paid by the town or city where the body is found, and all other expenses by the county.

Coroner, when to bury the body, etc.
Costs, how paid.
G. S. c. 175, § 14.
1871, c. 241, § 3.

STATE PAUPERS.

35. The several cities and towns may, at their own expense, send to the state almshouse at Tewksbury, to be maintained at the public charge, all paupers who may fall into distress therein, not having a settlement within the commonwealth: *provided*, that whenever the distance between such city or town and the state almshouse, by the usual route, exceeds thirty miles, the city or town shall be reimbursed by the commonwealth, upon bills approved by the general agent of state charities, for the expense of transportation in excess of thirty miles, at a rate not exceeding three cents a mile, by the usual route, for each state pauper thus sent.

Towns may send state paupers to state almshouse at Tewksbury at their own expense.
1872, c. 45, § 2.

36. The board of alien commissioners¹ may allow any city or town in the state to send sick state paupers to the hospital at

Commissioners may allow towns to send

¹ On the first day of October, 1863, the powers then belonging to the board of alien commissioners and to the superintendent of alien passengers were transferred to the "Board of State Charities." See act of 1863, c. 240.

sick paupers to Raynsford island, and such paupers, their kindred, and the places of their settlement, shall be subject to the same liability as if they had been sent to a state almshouse, to be enforced, in like manner.

Admission of
sick into alms-
house.
1865, c. 162, § 1.

37. No city or town authorities shall be allowed to send to either of the state almshouses any person infected with small-pox or other disease dangerous to the public health, nor any other sick person whose health would be endangered by removal; but all such persons, liable to be maintained by the commonwealth, shall be supported during such sickness by the city or town in which they are taken sick, and notice of such sickness shall be given to the board of state charities, who shall have authority to examine the case, and order the removal of the patient if they deem expedient.

State to reim-
burse expense.
Ibid. § 2.

38. The expense incurred by any city or town under the provisions of the preceding section, after notice shall have been given as therein required, and the bills for said support having been approved by the agent of the board of state charities, shall be reimbursed by the commonwealth to an amount not exceeding at the rate of the average weekly cost of the support of similar patients at the Raynsford island hospital.

Penalty for
violation of act.
Ibid. § 3.

39. Any mayor or overseer of the poor who shall knowingly offend against the provisions of the first section of this act [§ 34 of this digest] shall be subject to a penalty of not less than fifty nor more than one hundred dollars.

Not to send
lunatics who
are dangerous.
Inmates becom-
ing furiously
mad may be
sent to state
lunatic hos-
pitals.
G. S. c. 71, § 37.

40. No city or town shall send to either almshouse any person who, by reason of insanity, would be dangerous if at large. And if an inmate of such establishment becomes so insane, the inspectors thereof may apply to the judge of a police court, or any two justices of the peace, and of the quorum, in the county in which the institution is situated, who shall have the same power and authority in regard to such application and the commitment of such person to either of the state lunatic hospitals, as judges of probate courts have in regard to lunatics furiously mad: *provided*, that it shall not be necessary to give notice of such application to the officers of any place.

Idiots having
no known
settlement may

41. When it is made to appear on application in writing to any two justices of the peace, one of whom shall be of the quorum, or

to a police court, that any person having no known settlement in this state is idiotic and ought to be confined, said justices or court shall send such person to the nearest state almshouse, there to be supported, governed, and employed, in the same manner as persons sent thereto by overseers of the poor.

42. When, by reason of all the state almshouses being full, a city or town is unable to obtain admission for a state pauper, such place shall take charge of the pauper until notified by the superintendent, to whom application for admission has been made, that the pauper can be received. The superintendent shall give notice by mail when the pauper can be received, having regard in so doing to the priority of applications; and until notice is given, the city or town shall receive payment, for the support of the pauper, from the treasury of the commonwealth.

be sent to State almshouse.
G. S. c. 71, § 38.

When all state almshouses are full, towns, etc., to take charge of state paupers at expense of state. Notice thereof.
Ibid. § 46.
105 Mass. 337.

43. If a pauper having a legal settlement in any place becomes an inmate of either of said almshouses, such place shall be liable to the commonwealth for the expense incurred for him, in like manner as one town is liable to another in like cases; and the same measures shall be adopted by the inspectors and the board of state charities through their general agent, in regard to notifying towns so liable, the removal of the pauper, and the recovery from towns of expenses incurred for him, as are prescribed for towns in like cases.

Towns liable for support of their paupers in state almshouses.
Ibid. § 49.
1875, c. 94.
8 Gray. 455.
102 Mass. 216.
105 Mass. 337.

44. Whenever a person, having a settlement in this commonwealth, is committed to the state industrial school or to the state reform school, the trustees of the school to which such commitment is made shall give written notice of such commitment to the overseers of the poor of the place of settlement, and the town or city in which such person has a settlement, if notified as above stated, shall pay one dollar per week, from the date of such notice, for the support of such person in said school, which sum shall be paid to the treasurer of the commonwealth, or be recovered by him through the general agent of state charities. Any sum so paid may be recovered by such city or town of any parent, kindred or guardian liable by law to maintain such person.

Persons in reform and industrial schools to be supported by place of settlement.
1876, c. 169.

45. Whenever a child, having a settlement in this commonwealth, is committed to the state primary school, under the provisions of section ten of chapter three hundred and fifty-nine, of

Notice to be given to overseers of place of settlement

when child is
committed
under.
1876, c. 121.

the acts of the year eighteen hundred and seventy, the general agent of state charities shall give written notice of such commitment to the overseers of the poor of the place of settlement; and said overseers, with the assent of the board of state charities, may remove such child to said place of settlement, and said place of settlement shall pay one dollar per week, from the date of the notice aforesaid, for the support of such child in said school, which sum shall be paid to, or recovered by, the treasurer of the commonwealth.

Inmates of state
almshouses sen-
tenced to work-
house.
1870, c. 288.
1875, c. 94.
4 Met. 278.

46. When any inmate of either of the state almshouses, who is sentenced to the state workhouse as provided by St. 1870, c. 288, has a legal settlement in any city or town in this commonwealth, the said city or town shall pay for his support such sum per week as may be fixed upon by the said board, and all moneys so received shall be paid into the treasury in the manner now provided by law.

Husband and
wife not to be
separated.
1866, c. 234, § 1.
110 Mass. 98.

47. When the operation of any provisions of law in relation to poor and indigent persons might cause a separation of husband and wife, by reason of the wife having a legal settlement in some place in the commonwealth, the husband being a state pauper, both parties shall be supported by the place where the wife has a legal settlement.

Expense to be
paid by state.
Ibid. § 2.
But see § 47.
13 Mass. 501.

48. The expense of thus supporting the person, who is such state pauper, shall be paid by the commonwealth, reference being had to the expense of supporting such person at the state almshouse, if there committed.

Convicts dis-
abled, on expi-
ration of
sentence, how
provided for.
1864, c. 169, § 2.

49. Any convict who, at the legal expiration of his sentence, is in a condition, from bodily infirmity or disease, to render his removal impracticable, shall be provided for, and receive such treatment in the state prison, jail, or house of correction, as the exigency of the case may require, until he is in a condition to be removed. And the expense of such care and treatment of any discharged convict shall be paid by the city or town where he may have a legal settlement, or, if he is a state pauper, by the commonwealth.

Allowance for
state paupers.
G. S. c. 71, § 56.

50. Nothing shall be allowed from the treasury of the commonwealth to any county, city, or town, for expenses incurred on account of any state pauper, except in cases expressly provided by law.

51. All accounts against the commonwealth for allowance to counties, cities, and towns, on account of state paupers, shall be rendered to the board of alien commissioners¹ on or before the third Wednesday of January, annually; and shall be so made as to include all claims for such charges up to the first day of said January, and if approved by said board, and certified by the auditor of accounts, shall be paid from the treasury of the commonwealth. The commissioners may require such accounts to be accompanied with such statement of particulars and facts, and substantiated by such affidavits, as may seem to them proper.

Accounts of
counties, etc.,
how audited,
etc.
G. S. c. 71, § 57.
See § 36.

52. Any person having received a permit from the overseers of the poor of any city or town to become an inmate of any state almshouse or hospital, and expressing a preference to be sent to any state or place where said pauper may have a legal settlement, or friends willing to support him, the board of alien commissioners¹ shall have power to remove said pauper, previous to his committal to any state institution, if, in their judgment, the interest of the commonwealth and of the pauper will be promoted thereby: *provided*, that no person shall be so removed, unless, in the judgment of said overseers and commissioners, he will become a charge to the state for at least one year; and said commissioners shall return, in their annual report, the names of all persons removed under the provisions of this act, the places whence removed, and the cost of the several removals.

Paupers may be
sent out of
state.
1860, c. 83.

53. Any justice of the superior court, trial justice, or police court, upon complaint of the overseers of the poor of any place or of a superintendent of alien passengers,² in term time or vacation, may by warrant directed to a constable or other person therein designated, cause any pauper not born, nor having settlement, in this state, who may conveniently be removed, to be conveyed, at the expense of the state, to any other state, or, if not a citizen of the United States, to any place beyond sea where he belongs.

Foreign pau-
pers may be
carried where
they belong.
G. S. c. 71, § 52.

54. If any person, actually become chargeable as a pauper to any city or town in which he has a settlement, has a settlement subsequently acquired in any place without this commonwealth, the overseer of the poor of such city or town may cause him to be re-

Removal of
paupers to last
settlement.
1868, c. 328, § 2.

¹ Now board of state charities.

² Now agent of the board of state charities.

1868, c. 323, § 2. moved to said place of subsequent settlement, by a written order directed to any person therein designated, who may execute the same.

State lunatic
paupers may in
same manner
be sent home.
G. S. c. 71, § 53.

55. Upon complaint of the trustees of any state lunatic hospital, the county commissioners of a county, the inspectors of a state pauper establishment, or the overseers of the poor of a place, a judge of the probate court shall have the same powers as are given by section fifty-two, to cause the removal of state lunatic paupers under their charge to any other state, or beyond sea, where they belong.

Overseers of
poor, when to
perform duties
of superintend-
ent of alien
passengers.
Ibid. § 24.

56. The overseers of the poor in any place where there is no superintendent of alien passengers, or where such superintendent is unable to perform his duties by reason of absence or ill-health, shall perform the duties and exercise the authority of superintendents; and shall, in like manner, render their accounts to the state treasurer, and pay over the money received, deducting therefrom a reasonable compensation for their services.

ILLEGITIMATE CHILDREN.

Who may com-
plain, etc., if
woman refuses.
G. S. c. 72, §§ 1,
2.
3 Allen, 477, 481.
8 Allen, 334.
10 Allen, 389.

57. If a woman entitled to make a complaint against the father of her illegitimate child refuses or neglects so to do when requested by an overseer of the poor of the place where she resides or has her settlement, or one of the alien commissioners,¹ the superintendent of a state almshouse, or of the hospital at Raynsford island, or a person authorized by either of them to make the request, or either of her parents, or her guardian, the person so requesting may make the complaint; and when already made, if she refuses or neglects to prosecute the same, either of said persons may prosecute the case to final judgment, for the benefit of the parent, guardian, city, town, or state. In such cases the bond shall be made to the party for whose benefit the complaint is made or prosecuted.

If woman is in
state alms-
house, com-
plaint where

58. When a woman is an inmate of either of the state almshouses, a complaint by her, or in her behalf, may be made either in the county where she then is, or where she last had her usual

¹ Now board of state charities.

place of abode before becoming such inmate, and the warrant shall be returnable in the latter county, or the county where the defendant resides. When a complaint is made in the county of Suffolk, by or in behalf of an inmate of the hospital at Raynsford island, or the house of industry at Deer island, the warrant shall be returnable before the police court¹ of the city of Boston.

59. No complaint shall be withdrawn, dismissed, or settled by agreement of the mother and the putative father, without the consent of the overseers of the poor of the city or town in which she has her settlement or residence, or of one of the other officers named in section fifty-four, or of her parent or guardian, unless provision is made to the satisfaction of the court, to relieve and indemnify any parent, guardian, city, town, or the state, from all charges that have accrued or may accrue for the maintenance of the child, and for the costs of complaint and prosecution thereof.

60. No settlement made by the mother and father, before or after complaint is made, shall relieve the father from liability to any city or town, or the state, for the support of a bastard child.

61. Whoever has been imprisoned ninety days for having failed to comply with any order of the court, as provided in chapter seventy-two of the General Statutes, shall have the benefit of the laws for the relief of poor prisoners committed on execution: *provided*, that he procures like notification of his intention to take the oath prescribed to poor debtors, to be served upon the clerk of the city or town where the child of which he is the reputed father has its legal settlement, if there is such place in this state, and also upon the complainant, if living, thirty days at least before the time appointed for taking the oath.

62. The mother of such child, and said city or town, or the state respectively, may at all times, after the liberation of such prisoner, or taking said oath, recover by action of contract any sum of money which ought to have been paid to them respectively by him, in pursuance of such order of court.

63. Public officers authorized to institute prosecutions and make complaints under the provisions of section fifty-seven may,

made.
G. S. c. 72, § 3.

Complaint not to be withdrawn, without consent, etc.
Ibid. § 9.
But see § 63.
3 Allen, 148.
4 Allen, 59.
9 Allen, 459.

Liability for support.
Ibid. § 10.

Party charged as father may take poor debtor's oath.
Ibid. § 11.
3 Allen, 151.
103 Mass. 57.

Mother, etc., to have remedy, etc.
G. S. c. 72, § 12
32 Maine, 21.

Public officers may compromise suits.

¹ Now the municipal court.

1862, c. 213.
See § 59.

with the consent of the mother or of her parent or guardian, compromise the same on receipt of a fixed sum or security for the payment thereof, for the benefit of the city, town, or commonwealth, as the case may be, instead of prosecuting the same to final judgment.¹

DISPOSITION OF INSANE PAUPERS.

Pauper insane may be sent to hospital by overseer of the poor.
1862, c. 223, § 9.
But see 1864, c. 288, § 6.
6 Allen, 586.

64. Any insane person who is supported by any place as a pauper may be committed by the overseers of the poor thereof to either of the state lunatic hospitals, with the consent of the trustees, and shall be kept for a sum not exceeding the actual expense of his support. And the trustees shall receive into the hospital any other insane person having a settlement or residence in this commonwealth, for such compensation as they may determine.

Expenses of support of persons having settlements.
1862, c. 223, § 10.
16 Pick. 71.
18 Pick. 379.
9 Gray, 32.
13 Gray, 544.
6 Allen, 585.
12 Allen, 510.
99 Mass. 40.
116 Mass. 570

65. The expenses of the state lunatic hospitals for the support of lunatics having known settlements in this state shall be paid quarterly, either by the persons obligated to pay, or by the place in which such lunatics had their residence at the time of their commitment, unless other sufficient security is taken to the satisfaction of the trustees for such support. If any place or person refuses to pay whatever sum may be charged and due according to the by-laws of the hospital, on account of the support of such patient therein, or for the removal of any patient whom the trustees are authorized by law to remove, for thirty days after the same has been demanded by the treasurer, in writing, of the mayor and aldermen of the city, or of the selectmen of the town, or of the person liable therefor, the same, with interest from the time of such demand, may be recovered for the use of the hospital in an action to be instituted by the district-attorneys, or other prosecuting officers, in the name of the treasurer, against such delinquent city, town, or person.

Expense of clothing, burial, etc.
1862, c. 223, § 16.

66. The money and cost of clothing which the trustees of any state lunatic hospital, may by law furnish to discharged pauper lunatics, the expense of pursuing such as clope therefrom, and of burial of pauper lunatics dying in the hospitals, shall be reimbursed to the trustees by the places of legal settlement of city

¹ For further provisions of law relating to the maintenance of bastard children, see Gen. Sts. c. 72, and act of 1863, c. 127.

and town paupers, and by the commonwealth in the case of state paupers. 1862, c. 223, § 16.

67. Every city and town paying expenses for the support or removal of a lunatic committed to either hospital shall have like rights and remedies to recover the full amount thereof, with interest and cost, of the place of his settlement, as if such expenses had been incurred in the ordinary support of the lunatic; and the lunatic, if of sufficient ability to pay the same, and any kindred obligated by law to maintain him, shall be liable for all such expenses paid by any city or town in either case.

Remedy of towns for expenses of lunatics committed to hospitals.
G. S. c. 73, § 25.
18 Pick. 379.
9 Cush. 585.
1 Gray, 514.
5 Gray, 390, 393.
11 Gray, 107.
6 Allen, 585.
12 Allen, 510.

MASTERS, APPRENTICES AND SERVANTS.

68. Children under the age of fourteen years may be bound as apprentices or servants until that age; and minors above the age of fourteen years may be bound as apprentices or servants; females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty-one years.

Minors may be bound as apprentices or servants.
G. S. c. 111, § 1.

69. Children under the age of fourteen years may be bound by their father, or, in case of his death or incompetency, by their mother or legal guardian. If illegitimate, they may be bound by their mother during the lifetime of the putative father, as well as after his decease. If they have no parent competent to act, and no guardian, they may, with the approbation of the selectmen of the town where they reside, bind themselves. The power of a mother to bind her children shall cease upon her subsequent marriage, and shall not be exercised by herself or husband during the continuance of such marriage.

How bound when under fourteen years.
Ibid. § 2.
2 Mass. 109, 387, 433.
12 Mass. 387, 433.

70. Minors above the age of fourteen years may be bound in the same manner, but, when bound by their parent or guardian, the minor's consent shall be expressed in the indenture and testified by his signing the same.

When above fourteen.
G. S. c. 111, § 3.
5 Cush. 417.

71. A minor child who is, or either of whose parents is, chargeable to a town as having a lawful settlement therein, or supported there at the expense of the state, may be bound as an apprentice or servant by the overseers of the poor.¹

Overseers of poor may bind.
G. S. c. 111, § 4.
7 Greenl. 457.
4 N. H. 139.
2 Pick. 451.
9 Allen, 207.
107 Mass. 419.

¹ It seems, that overseers of the poor, in binding out paupers, are not agents of the city, but public officers guided by statute law of the commonwealth in the discharge of their duties, and not by the wishes or directions of the city.
9 Allen, 208.

At what age
and upon what
terms they may
be bound.

G. S. c. 111, § 5.
5 Pick. 250.
16 Pick. 44.
7 Gray, 473.
107 Mass. 419.

Indenture to be
of two parts,
etc.

G. S. c. 111, § 6.
See §§
9 Gray, 377.

One part of
indenture to be
kept for minor.

G. S. c. 111, § 7.

Money, etc., to
be for use of
apprentice.

Ibid. § 8.

Parents, over-
seers, etc., to
inquire into
treatment of
children.

Ibid. § 9.

Complaint for
misconduct of
master or ser-
vant may be
filed in superior
court, etc.

Ibid. § 10.
2 Pick. 451.

72. Such children, whether under or above the age of fourteen years, may be so bound; females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching them to read, write, and cipher, and for such other instruction, benefit, and allowance, either within or at the end of the term, as the overseers may deem reasonable.

73. No minor shall be so bound unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the selectmen, they shall certify such approbation in writing upon each part of the indenture.

74. One part of the indenture shall be kept by the parent or guardian executing it, for the use of the minor; and when made with the approbation of the selectmen, or by the overseers of the poor, shall be deposited with the town-clerk, and safely kept in his office for the use of the minor.

75. All considerations of money or other things paid or allowed by the master upon a contract of service or apprenticeship, made in pursuance of the seven preceding sections, shall be paid or secured to the sole use of the minor bound thereby.

76. Parents, guardians, selectmen, and overseers, shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all bound by or with the approbation of the predecessors in office of any of them, and defend them from all cruelty, neglect, and breach of contract, on the part of masters.

77. Complaints by parents, guardians, selectmen, or overseers, for misconduct or neglect of the master, and by the master, for gross misbehavior, or refusal to do his duty, or wilful neglect thereof on the part of the apprentice or servant, may be filed in the superior court in the county where the master resides, setting forth the facts and circumstances of the case. The court shall order notice to the adverse party, and, if the complaint is by the master, to all persons who have covenanted in behalf of the apprentice or servant, and to the selectmen who approved of the indenture, or their successors in office, and shall hear and determine the case, with or without a jury, as the allegations of the parties may require.

78. The court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, or the master from his contract, and the minor thus discharged may be bound out anew.

Court may discharge apprentice, etc.
G. S. c. 111, § 11.
2 Pick. 451.

79. Costs may be awarded to the prevailing party, and execution issued therefor; but no costs shall be awarded against selectmen or overseers, unless it appears that the complaint was made without just and reasonable cause. Costs in favor of the master may be recovered of the parent or guardian who executed the indenture, or, if there is no parent or guardian liable therefor, such costs may be recovered in an action against the minor when he arrives at full age.

Court may award costs.
Ibid. § 12.

80. Every master shall be liable to an action on the indenture for the breach of any covenant on his part therein contained. All damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use by the person who recovers the same, and the residue shall be paid to the minor, if a male, at the age of twenty-one years, and if a female, at the age of eighteen years, or at the time of her marriage within that age.

Master liable to action on indenture.
Ibid. § 13.

81. Such action may be brought by the parent or his executors or administrators, the guardian, or any one who succeeds him in that trust, or the overseers or their successors in office; or it may be brought in the name of the minor by his guardian or next friend, as the case requires; or by himself after the expiration of the term of apprenticeship or service.

By whom action may be brought.
Ibid. § 14.
98 Mass. 137.

82. If the action is brought by the overseers, it shall not abate by the death of any of them, or by their being succeeded in office, but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor; and the money recovered therein shall be deposited in the city or town treasury, to be applied and disposed of as provided in section eighty.

Proceedings therein when brought by overseers.
Ibid. § 15.

83. No such action shall be maintained, unless commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

Limitation of action by apprentice.
Ibid. § 16.

84. If judgment in such action is rendered for the plaintiff, the

If judgment for

plaintiff, court
may discharge
apprentice.
G. S. c. 111, § 17.

Master to have
bond for service.
1865, c. 270, § 1.

Proviso.

Minor to have
bond of master.

Proviso.

Custody of bond
for use of minor.
Ibid. § 2.

Minors under
control of over-
seers of poor
not to be re-
moved from
state without
authority from
judge of pro-
bate.
1863, c. 279, § 1.
Proviso.

court may, upon motion of the plaintiff, discharge the minor from his apprenticeship or service, if not already done as before provided, and the minor may be bound out anew.

85. No minor shall be bound as an apprentice or servant, unless his parent or guardian, or some responsible person in his behalf, shall give a written bond in the sum of two hundred dollars to the master, with condition that the minor shall serve him for the full term of such apprenticeship or service, and that the master shall be held harmless from any loss or damage from the breach of such condition: *provided*, that minor children who have no parents able to give such bond may be so bound by giving a bond in such sum as may be agreed upon by and between the master and the parents or guardian of such minor. And the master shall also give bond to the minor in a like sum, with condition that he shall comply with the conditions of the indenture, and shall not be guilty of any misconduct towards the apprentice or servant, and shall hold the apprentice or servant harmless from any loss or damage by reason of any failure on his part to comply with the terms of the indenture or contract: *provided*, that whenever minors are bound by state, town, or municipal authorities or authorized agents, the bond required to be given to the master may be waived by the parties.

86. The bond given by the master shall be kept for the use of the minor, by the parent or guardian; and when there is no parent or guardian, it shall be deposited with the town-clerk where the master resides, and safely kept in his office for the use of the minor.

87. It shall be unlawful for the overseers of the poor of any city or town to remove beyond the limits of this commonwealth any minor under their control, or cause or allow the same to be done, or to withhold information concerning the maintenance of such minor, from any person entitled to receive the same: *provided*, that the judges of probate may, upon application of the overseers of the poor of any town in their respective counties, upon a hearing thereon, after due notice to all parties interested, authorize such removal to be made; and *provided, further*, that this act shall not apply to minors who have a settlement in other states.

88. Any overseers of the poor violating the provisions of the preceding section shall be punished by a fine not exceeding five hundred dollars. Penalty for violation 1868, c. 279, § 2.

89. No indenture of apprenticeship or service made in pursuance of this chapter shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew. Apprenticeship discharged by death of master. G. S. c. 111, § 21.

90. All the foregoing provisions shall apply as well to mistresses as to masters. Mistresses. Ibid. § 22.

91. Nothing contained in the preceding sections shall affect the father's right at common law to assign or contract for the services of his children during their minority. Common-law right. Ibid. § 23.*

92. Everything prescribed in preceding sections to be done by the selectmen of a town shall and may be done by the mayor and aldermen of a city; and everything prescribed to be done by the overseers of the poor of a town shall and may be done by the overseers of the poor of a city, or the directors of the house of industry, or such other officers as have charge of the poor therein. Powers and duties, in whom invested in cities. Ibid. § 24.

ACQUIREMENT OF SETTLEMENTS.

93. Legal settlements may be acquired in any city or town, so as to oblige such place to relieve and support the persons acquiring the same in case they are poor and stand in need of relief, in the manner following, and not otherwise, namely:— Settlements, how acquired. G. S. c. 69, § 1.†

First. A married woman shall follow and have the settlement of her husband, if he has any within the state; otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by marriage. By married women.†

* 9 Gray, 377; 1 Mason, 78; 8 Johns. 328; 1 Ashm. 267; 3 B. & Ald. 586; 7 Mass. 147; 98 Mass. 137.

† 13 Mass. 547; 15 Mass. 260; 2 Pick. 394; 1 Met. 580; 10 Cush. 517; 105 Mass. 293.

‡ 9 Mass. 201; 12 Mass. 363; 1 Pick. 506; 13 Pick. 303; 23 Pick. 242; 4 Allen, 458; 8 Allen, 557; 13 Allen, 88; 110 Mass. 98; 105 Mass. 293; 32 N. H. 245.

By legitimate children.*

Second. Legitimate children shall follow and have the settlement of their father if he has any within the state, until they gain a settlement of their own; but if he has none, they shall, in like manner, follow and have the settlement of their mother, if she has any.

By illegitimate children.

12 Mass. 388, 429.

13 Mass. 381.

23 Pick. 242.

8 Cush. 75.

8 Allen, 551.

Third. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth in the place where they may be born, if neither of their parents then has a settlement therein.

By living on freehold estate.

1868, c. 328, § 1.

1871, c. 379.

Fourth. Any person of the age of twenty-one years, and having an estate of inheritance or freehold in any place within the state, and living on the same three years successively, shall thereby gain a settlement in such place, whether such qualifications shall have been acquired before or after the ninth of June, 1868.

By being assessed.†

G. S. c. 60, § 1.

1868, c. 328, § 1.

1871, c. 379.

Fifth. Any person of the age of twenty-one years, having an estate, the principal of which shall be set at two hundred dollars, or the income at twelve dollars, in the valuation of estates made by assessors, and being assessed for the same, to state, county, city, or town taxes, for five years successively in the place where he dwells and has his home, shall thereby gain a settlement therein, whether such qualifications shall have been gained before or after the ninth of June, 1868.

By serving one

Sixth. Any person being chosen and actually serving one whole

* 4 Mass. 493; 13 Mass. 469, 472; 15 Mass. 287, 260; 16 Mass. 135; 17 Mass. 398; 1 Pick. 197, 506; 3 Pick. 173; 4 Pick. 174; 7 Pick. 140; 18 Pick. 264; 23 Pick. 245; 12 Met. 37, 38; 8 Cush. 528; 10 Cush. 517; 13 Gray, 341; 4 Allen, 458; 6 Allen, 31; 8 Allen, 551; 105 Mass. 287; 106 Mass. 598; 37 N. H. 441, 442; 24 Me. 281.

† 4 Mass. 384; 11 Mass. 327; 14 Mass. 384; 2 Pick. 29; 16 Pick. 222; 19 Pick. 294; 21 Pick. 233; 3 Met. 165; 5 Met. 350; 13 Met. 192; 4 Cush. 172; 8 Cush. 525; 1 Gray, 619; 13 Gray, 92; 15 Gray, 15, 19; 16 Gray, 395; 5 Allen, 137; 6 Allen, 431, 477; 9 Allen, 137; 13 Allen, 88; 107 Mass. 598; 110 Mass. 113.

‡ 6 Mass. 50; 11 Mass. 327; 15 Mass. 160, 253; 3 Pick. 198; 22 Pick. 385; 24 Pick. 166; 3 Met. 428; 4 Met. 178; 5 Met. 350; 4 Cush. 557; 11 Cush. 292; 2 Gray, 482; 4 Gray, 283; 13 Gray, 586; 15 Gray, 15, 17, 496, 498; 4 Allen, 574; 6 Allen, 477; 98 Mass. 159; 99 Mass. 587; 100 Mass. 171; 106 Mass. 598.

year in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable, or collector of taxes, in any place, shall thereby gain a settlement therein. For this purpose a year shall be considered as including the time between the choice of such officers at one annual meeting, and the choice at the next annual meeting, whether more or less than a calendar year.

Seventh. Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the place wherein he is or may be settled as a minister.

Eighth. Any person admitted an inhabitant by any place at a legal meeting, held under a warrant containing an article for that purpose, shall thereby acquire a legal settlement therein.

Ninth. Any person of the age of twenty-one years, dwelling and having his home in any unincorporated place at the time it is incorporated into a town, shall thereby acquire a legal settlement therein, whether such qualifications shall have been gained before or after the ninth of June, 1868.

Tenth. Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in that place wherein his last dwelling-place or home happens to fall upon such division; and when a new city or town is incorporated, composed of a part of one or more incorporated places, every person legally settled in the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, shall thereby acquire a legal settlement in such new place: *provided*, that no person residing in that part of a place which, upon such division, shall be incorporated into a new city or town, having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means by which he would have gained it there if no such division had been made.

Eleventh. A minor who serves an apprenticeship to a lawful trade for the space of four years in any place, and actually sets up such trade therein within one year after the expiration of said

year in town offices.

12 Mass. 262.

15 Mass. 523.

1 Pick. 129.

Settlement acquired by ministers.

4 Cush. 553.

7 Allen, 90.

By persons admitted inhabitants by vote.

By incorporation of an unincorporated place.

1863, c. 328, § 1.*

1871, c. 379.

Where to be upon division or incorporation of town.

4 Mass. 278, 384,

353, 456, 676.

10 Mass. 341.

17 Mass. 398.

4 Pick. 117, 357.

13 Pick. 303.

16 Pick. 197.

19 Pick. 426.

6 Met. 434.

4 Cush. 185.

1 Allen, 75.

116 Mass. 591.

By serving apprenticeship four years, etc.
G. S. c. 66, § 1

* 4 Mass. 452; 6 Mass. 445; 4 Pick. 351; 6 Met. 484.

G. S. c. 69, § 1. term, being then twenty-one years old, and continues there to carry on the same for five years, shall thereby gain a settlement in such place; but being hired as a journeyman shall not be considered as setting up a trade.

By residence
and paying
taxes.

1868, c. 328, § 1.*
1871, c. 379.
1874, c. 274.

Twelfth. Any person of the age of twenty-one years, who resides in any place within this state for five years together, and pays all state, county, city or town taxes, duly assessed on his poll or estate for any three years within said time, shall thereby gain a settlement in such place, whether such qualifications shall have been acquired before or after the ninth of June, 1868.

Provisions for
persons who
have begun to
acquire settle-
ments.

G. S. c. 69, § 2.

94. No person who had begun to acquire a settlement by the laws in force at and before the time¹ when the preceding section took effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act, shall be prevented or delayed by the provisions of the preceding section; but he shall acquire a settlement by a continuance or succession of the same residence, or other act, in the same time and manner as if the former laws had continued in force.

Settlement to
continue, until,
etc.

Ibid. § 3. †

95. Every legal settlement shall continue till it is lost or defeated by acquiring a new one within this state; and upon acquiring such new settlement all former settlements shall be defeated and lost.

Settlement
gained by a
woman by five
years' residence.
1874, c. 274, § 2.
6 Allen, 31.

96. Any woman at the age of twenty-one years, who resides in any place within this state for five years together without receiving relief as a pauper, shall thereby gain a settlement in such place.²

* 5 Mass. 430; 10 Mass. 394; 13 Mass. 460, 462, 502; 15 Mass. 237; 16 Mass. 236; 2 Pick. 535; 7 Pick. 42; 8 Pick. 408; 10 Pick. 378; 12 Pick. 1; 19 Pick. 389, 480; 20 Pick. 345; 3 Met. 428; 10 Met. 115; 12 Met. 35; 4 Cush. 190, 538, 557; 13 Gray, 586; 15 Gray, 15; 4 Allen, 574; 6 Allen, 508; 99 Mass. 587; 105 Mass. 293; 106 Mass. 268.

† 4 Mass. 133; 6 Mass. 501; 9 Mass. 201; 10 Mass. 413; 11 Mass. 441; 12 Mass. 363; 15 Mass. 257; 2 Pick. 28, 572; 9 Pick. 55; 24 Pick. 164; 13 Met. 192; 6 Cush. 61, 320; 13 Gray, 586.

¹ When this act was passed.

² In the case of the City of Somerville *vs.* City of Boston (1876, not yet reported) on the question whether statute 1874, c. 274, § 2, so far repeals Gen. Sts. c. 29, § 1, cl. 1, that a married woman shall thereby acquire a settlement in a city or town where her husband has none, it was decided that the statute of 1874 was intended simply to diminish the time required to gain a settlement, and did not extend the class of persons to whom the law, as it then stood, was applicable.

97. No existing settlement shall be changed by any provision of this act unless the entire residence and taxation herein required accrues after its passage, but any unsettled person shall be deemed to have gained a settlement upon the completion of the residence and taxation herein required, though the whole or a part of the same accrues before the passage of this act.

Existing settlement not changed, unless, etc.
1871, c. 274, § 3.
6 Cush. 61.

98. All settlements acquired by virtue of any provision of law in force prior to the eleventh day of February, in the year one thousand seven hundred and ninety-four, except where the existence of such settlement prevented a subsequent acquisition, are hereby declared defeated and lost. Wherever a settlement acquired by marriage has been defeated by virtue of the provisions of this section, the former settlement of the wife, if not defeated by the same provisions, shall be deemed to have been thereby revived.

Settlements acquired by law in force previous to Feb. 11, 1794.
1870, c. 392.
1871, c. 379.
105 Mass. 287, 292.
116 Mass. 570.

99. Any person who shall have been duly enlisted and mustered into the military or naval service of the United States, as a part of the quota¹ of any city or town in this commonwealth, under any call of the president of the United States, during the recent civil war, or duly assigned as a part of the quota thereof, after having been enlisted and mustered into such service, and who shall have continued in such service for a term not less than one year, or who shall have died or become disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner in the hands of the enemy, and the wife or widow and minor children of such person shall be deemed thereby to have acquired a settlement in such city or town.

Soldiers and sailors who served as part of quota of any town, etc., acquire settlement.
1870, c. 392, § 3.
1871, c. 379.
97 Mass. 352.
102 Mass. 353.
104 Mass. 46.
106 Mass. 263.
107 Mass. 282.
115 Mass. 336.

100. The provisions of the preceding section shall not apply to any person who shall have enlisted and received a bounty for such enlistment in more than one town, unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who shall have been proved guilty of wilful desertion, or to have left the service otherwise than by reason of disability or an honorable discharge.

When provisions of preceding section do not apply.
1870, c. 392, § 4.

101. Any person who would otherwise be entitled to a settlement under section three of this act [§99 of this digest], but who

Persons who served on quota of common-

¹For information respecting the *quota* of the city of Boston, see the military and naval records of the said city in the office of the city clerk, prepared by authority of the statutes of 1863, 65, and 1863, c. 229.

wealth gain
settlement
where residing
at time of en-
listment.
1870, c. 392, § 5.

was not a part of the quota of any city or town, shall, if he served as a part of the quota of this commonwealth, be deemed to have acquired a settlement in the city or town where he actually resided at the time of his enlistment.

PARKS.

STATUTES.

COMMON.

Common.
Charter, § 39.
16 Pick. 87.

1. The city council shall have the care and superintendence of the public buildings, and the care, custody, and management of all property of the city, with power to lease or sell the same, except the common¹ and Faneuil hall.

PUBLIC GARDEN.

Public garden.
1859, c. 210.

2. By an act passed April 6, 1859, it was provided that no building should, after the passage of the act, be erected between Arlington and Charles streets, except such as are expedient for horticultural purposes: *provided*, that nothing contained in the act should render it unlawful to erect a city hall on the public garden. The act also provided that the commonwealth should grant to the city other lands in consideration of the city relinquishing the right it had to erect buildings on the strip of land on the east side of Arlington street, conveyed to the city by the commonwealth, December 11, 1856.

TREES, STATUES, ETC., ON PUBLIC GROUNDS.

Penalty for
injuring trees,
statues, etc.,

3. Whoever wantonly injures, defaces, tears, or destroys an ornamental or shade tree, or shrub, statue, fountain, vase, or

¹ In 1634 the inhabitants of the town of Boston purchased of William Blaxton, for the sum of £30, all his interest in any lands lying within the neck of land called Boston, except in six acres where his house stood. Of the lands so purchased, a portion, understood to include the greater part of what is now called the common, was set apart as the common training-field. It was used for that purpose, and as a common pasture, until a comparatively recent date. It is now used only as a pleasure-ground. In 1787 it was enlarged by the purchase of two and one-eighth acres of land adjoining the southern and eastern boundaries.

other plant or fixture of ornament or utility, in a street, road, square, court, park, public garden, or other enclosure, shall forfeit not less than five nor more than one hundred dollars, to be recovered by complaint, one half to the complainant and the other half to the use of the person upon whose property, or within whose premises, the trespass was committed.

4. Whoever negligently or carelessly suffers any horse or other beast driven by or for him, or any beast belonging to him and lawfully on the highway, to break down, destroy, or injure any tree not his own, standing for use or ornament on said highway, or negligently or wilfully by any other means breaks down, destroys, or injures any such tree, shall be subject to an action for damages at the suit of the owner or tenant of the land in front of which the tree stands.

5. In a city in which the city council, and in a town in which the inhabitants, have accepted this section,¹ the mayor and aldermen or selectmen may set out and maintain shade trees upon the public squares and highways at the expense of such city or town, which may appropriate annually for that purpose a sum not exceeding twenty-five cents for each of its ratable polls in the year next preceding that in which such appropriation is made.

HIGHWAYS OVER PUBLIC GROUNDS.

6. No highway, town-way, street, turnpike, canal, railroad or street railway, shall be laid out or constructed in, upon, through or over any public common or public park which has been dedicated to the use of the public or appropriated to such use without interruption for the period of twenty years or longer, nor shall any part of any such public common or public park be taken for widening or altering any highway, town-way or street previously located or constructed, except after public notice, to be given in the same manner as provided in cases of applications for the location and alteration of highways, in which notice shall be specifically set forth, the extent and limits of the portion of the public common or public park proposed to be taken, and unless

in streets, parks, etc.
G. S. c. 46, § 7.
G. S. c. 161,
§§ 82, 83, 84.
See "Trees,"
post.
11 Cush. 414,
6 Gray, 349.
97 Mass. 357.

Owners of
beasts liable for
injury to trees,
etc.
G. S. c. 46, § 8.
100 Mass. 257.

Trees may be
set out at public
expense, etc.
G. S. c. 46, § 9.
See "Trees,"
p. 863.

Streets, etc., not
to be laid out
upon a public
park, without
consent of in-
habitants.
1875. c. 163, § 1.
16 Pick. 87.

¹ Gen. Sts. c. 46, § 9. This section does not appear to have been accepted by the city.

1875, c. 163, § 1. the consent of the inhabitants of the city or town in which the same is situated is first obtained. Such consent shall be expressed by vote of the inhabitants whenever as many as ten legal voters file a request in writing to that effect, with the selectmen of the town or the mayor and aldermen of the city, within thirty days after the publication of the notice; in the absence of such request consent shall be presumed to be granted.

Consent to be expressed by a majority vote. Ibid. § 2.

Meetings to be warned as for other elections.

7. When such public common or public park is situated in a city, the vote by which such consent is expressed shall be that of a majority of the voters present and voting by ballot, "yes" or "no," in answer to the question of giving such consent at meetings in the several wards on such day as shall be appointed for the purpose by the mayor and aldermen. Such meetings shall be notified and warned by the mayor and aldermen fourteen days at least before the day appointed therefor, and the votes shall be received, sorted and counted, and declaration and return thereof shall be made in the same manner as votes at other elections, and all provisions of law relating to elections shall be applicable to such meetings. The returns from the several wards shall be examined by the mayor and aldermen, and the result of the balloting shall be ascertained in the same manner as at other elections, and a certificate of the result shall be entered by the city-clerk upon the records of the city. Such meetings may be held on the same day with any other election, if the mayor and aldermen so appoint.

PARK COMMISSIONERS IN BOSTON.

Three commissioners to be appointed by the mayor of Boston. 1875, c. 185, § 1.

8. The mayor of the city of Boston, with the approval of the city council, shall, as soon as may be after this act [St. 1875, c. 185] shall take effect, appoint three competent commissioners, who shall hold their offices until the expiration of terms of two, three, and four years, respectively, from the first day of May, in the year eighteen hundred and seventy-five. The mayor shall, with like approval, before the first day of May in each year after the year eighteen hundred and seventy-six, appoint a commissioner to continue in office for the term of three years from said day. No person shall be a commissioner who is at the same time a member of the city council of said city; and any commissioner may at any

time be removed by a concurrent vote of two-thirds of the whole of each branch of said council. 1875, c. 185, § 1.

9. Said commissioners shall constitute a board of park commissioners, and any vacancy occurring in said board shall be filled, for the residue of the term of the commissioner whose place is to be filled, in the same manner in which such commissioner was originally appointed. Said commissioners shall receive such compensation as the city council shall determine. Board of park commissioners. Vacancies. Ibid. § 2. Compensation.

10. Said board shall have power to locate within the limits of the city of Boston one or more public parks; and for that purpose, from time to time, to take in fee, by purchase or otherwise, any and all such lands as said board may deem desirable therefor; or to take bonds for the conveyance thereof to said city, to lay out, improve, govern and regulate any such park or parks, and the use thereof; to make rules for the use and government thereof, and for breaches of such rules to affix penalties not exceeding twenty dollars for one offence, to be imposed by any court of competent jurisdiction; to appoint all necessary engineers, surveyors, clerks and other officers, including a police force to act in such parks; to define the powers and duties of such officers, and fix the amount of their compensation; and generally to do all needful acts for the proper execution of the powers and duties granted to, or imposed upon, said city, or said board, by this act: *provided, however*, that no land shall be taken, or other thing involving an expenditure of money done, until an appropriation, sufficient to cover the estimated expense thereof, shall have been made by a vote of two-thirds of each branch of the city council of said city. May locate, etc. one or more parks in the city. Ibid. § 3. To make rules for government of parks. To appoint engineers and police force. No land to be taken until sufficient appropriation is made.

11. Said board shall, within sixty days after the taking of any land under this act, file in the registry of deeds for the county in which the land is situated a description thereof, sufficiently accurate for identifying the same. To file in registry of deeds a description of the land taken. 1875, c. 185, § 4.

12. Said board shall estimate and determine all damages sustained by any persons by the taking of land or other acts of said board in the execution of the powers vested in them by this act; but any party aggrieved by any such determination of said board may have his damages assessed by a jury of the superior court, in the same manner as is provided by law, with respect to damages sustained by reason of the laying out of ways in the city of Boston. To estimate and determine all damages. Ibid. § 5.

Fee of lands
taken to vest in
the city.
1875, c. 185, § 6.

13. The fee of all lands taken or purchased by said board under this act shall vest in the city of Boston, and said city shall be liable to pay all damages assessed or determined, as provided in the preceding section, and all other costs and expenses incurred by said board in the execution of the powers vested in them by this act. Said city shall also be authorized to take and hold in trust or otherwise any devise, grant, gift or bequest that may be made for the purpose of laying out, improving or ornamenting any parks in said city.

Real estate may
be assessed for
betterments.
Ibid. § 7.

14. Any real estate in the city of Boston, which in the opinion of said board shall receive any benefit and advantage from the locating and laying out of a park under the provisions of this act, beyond the general advantages to all real estate in the city of Boston, may, after like notice to all parties interested as is provided by law to be given by the street commissioners of the city of Boston in cases of laying out of streets in said city, be assessed by said board for a proportional share of the expense of such location and laying out: *provided*, that the entire amount so assessed upon any estate shall not exceed one-half of the amount which said board shall adjudge to be the whole benefit received by it.

Assessments to
be made within
two years.
Ibid. § 8.

15. No assessment shall be made as provided in the preceding section except within two years after the passage of the order, the execution of which causes the benefit for which the assessment is made.

To constitute a
lien upon real
estate.
Ibid. § 9.

16. All assessments made under this act shall constitute a lien upon the real estate so assessed, to be enforced and collected by the city of Boston, in the same manner and with like charges for costs and interest as is provided by law for the collection of taxes; and such assessments may be apportioned by said board in like manner as assessments for benefits caused by the laying out of ways may now be apportioned by the street commissioners of said city.

Party aggrieved
may have as-
sessment by a
jury.
Ibid. § 10.

17. Any party aggrieved by any assessment made by said board as aforesaid, may have the amount of the benefit received by his estate assessed by a jury of the superior court, in the same manner as is provided by law with respect to damages sustained by reason of the laying out of ways in the city of Boston.

Assessment
upon leased real
estate to be paid
by owner.
Ibid. § 11.

18. When an assessment is made under this act upon an estate, the whole or any portion of which is leased, the owner of the estate shall pay the assessment, and may thereafter collect of the lessee

an additional rent for the portion so leased, equal to ten per centum per annum on that proportion of the whole sum paid which the leased portion bears to the whole estate after deducting from the whole sum so paid any amount he may have received for damages to the estate above what he has necessarily expended on such estate by reason of such damages.

Owner may collect additional rent of lessee.

19. For the purpose of defraying the expenses incurred under the provisions of this act, the city council of Boston shall have authority to issue, from time to time, and to an amount not exceeding the amount actually expended for the purchase or taking of lands for said parks, bonds or certificates of debt, to be denominated, on the face thereof, the "public park loan," and to bear interest at a rate not exceeding six per centum per annum, and to be payable at such periods as said council may determine. For the redemption of such loan said council shall establish a sinking fund sufficient, with the accumulating interest, to provide for its payment at maturity. All sums received for betterments shall be paid into said sinking fund, until such fund shall amount to a sum sufficient, with its accumulation, to pay at maturity the bonds for the security of which the fund was established.

Public park loan.
1875, c. 185, § 12.

Sinking fund.

20. No street or way, and no steam or horse railroad shall be laid out over any portion of any park located under this act, except at such places and in such manner as said board shall approve.

Streets, etc., not to be laid out over park, except as board approves.
Ibid. § 13.

21. No military encampment, parade, drill, review, or other military evolution or exercise shall be held or performed on any park laid out as aforesaid, except with the prior consent of said board; nor shall any military body, without such consent, enter or move in military order within the same, except in case of riot, insurrection, rebellion or war.

Military bodies not to enter park unless board consents.
Ibid. § 14.

22. Said board shall annually, in the month of January, make to the city council of Boston a full report of its doings for the preceding year, including a detailed statement of all their receipts and expenditures.

Annual report to be made to city council.
Ibid. § 15.

23. The mayor of any city adjoining the city of Boston may, with the approval of the city council of such adjoining city, appoint, and the inhabitants of any town adjoining the city of Boston may, at any legal meeting called for the purpose, elect park commissioners, who shall have power similar to those herein-

Park commissioners may be appointed in cities adjoining Boston.
Ibid. § 16.

1875, c. 185, § 16. before given to the park commissioners of the city of Boston, to lay out and improve parks within such adjoining city or town in conjunction or connection with any park laid out in Boston; and any park laid out by the park commissioners of such adjoining city or town shall be subject to similar provisions to those hereinbefore made regarding parks in Boston, and such adjoining city or town shall have similar rights and be subject to similar duties to those hereinbefore given to and imposed upon the city of Boston in relation to incurring debts for the purpose of defraying expenses incurred under this act: *provided, however*, that the provisions of this section shall not apply to any such adjoining city that has not accepted the same by a vote of a majority of the legal voters at the annual meeting for the choice of municipal officers.¹

Proviso.

ORDINANCES.²

Committee on
common, etc.
Feb. 28, 1870.

SECTION 1. There shall be appointed, annually, in the month of January, a joint committee of the city council, to be called the committee on the common and public grounds, to consist of three members of the board of aldermen and five members of the common council.

To have care of

SECT. 2. The said committee shall have the care

¹ Section 17 of the act (omitted here) provided that it should not take effect unless accepted by a majority of the legal voters of Boston. The vote was taken June 9, 1875, and it was accepted. Yeas, 3,706; nays, 2,311. On July 8 the following commissioners were duly appointed: T. Jefferson Coolidge, for four years; William Gray, jr., for three years; and Charles H. Dalton, for two years, from the first day of May, 1875.

² An ordinance to amend an ordinance in relation to the common and public grounds, passed February 28, 1870. An ordinance in addition to an ordinance in relation to the common and public grounds, passed July 23, 1872. (Published in the daily papers, July 27-29, for two weeks.) Ordinance in relation to the discharge of cannon upon the common or public grounds, passed September 23, 1873. Ordinance in addition to an ordinance in relation to the common and public grounds, passed May 29, 1875. (Published twice a week, for two weeks in the *Herald, Journal* and *Transcript*, June 2, 1875.)

and custody of the common, public garden, public squares and public fountains of the city, subject to such ordinances as may from time to time be passed by the city council; but no money shall be expended on the same except for such purposes as shall be ordered by the city council; and said committee may expend not exceeding five hundred dollars from the annual appropriation of the city council.

SECT. 3. Upon the passage of this ordinance, and annually afterwards on the first Monday of February, or as soon thereafter as may be, there shall be elected, by concurrent vote of both branches of the city council, a superintendent of the common and public grounds, who shall hold his office for one year from the first Monday of April in the year in which he shall be elected, unless sooner removed; and he shall be removable at the pleasure of the city council; and a vacancy occasioned by any cause may be filled at any time for the unexpired term. He shall be a resident citizen of Boston, and shall receive such compensation for his services as the city council may from time to time determine.

SECT. 4. The superintendent of the common and public grounds shall, under the direction and control of the city council, or a joint committee thereof, have the care and superintendence of the common, public garden, and all the public squares and enclosures belonging to the city, and also the trees in the streets of the city. He shall cause all laws and ordinances made for the protection of trees, shrubs and flowers in the

common, etc.
Feb. 28, 1870.

Superintendent,
how chosen.
Ibid.

To have care
and superinten-
dence of public
grounds.
Ibid.

Feb. 28, 1870.

common and other public grounds and streets of the city to be strictly enforced, and shall institute legal proceedings against all trespassers thereon.

Police to arrest
trespassers.
Ibid.

SECT. 5. It shall be the duty of any police officer to remove from the common, public garden, or any of the public squares or common lands, any person who is violating any law or ordinance, or is committing any nuisance, or is guilty of disorderly conduct.

Horses not to go
on common, etc.
Ibid.

SECT. 6. No person shall ride, lead or drive any horse in or upon the common, public garden, or in or upon any public square, or any open ground belonging to the city, unless by permission of the mayor or the said joint committee of the city council: *provided, however*, that on occasion of military exercise, parade or review, the introduction of any horses on the common which may be necessary for the purpose of such exercise, parade or review, shall not be deemed an infraction of this ordinance.

No person to
dig on common,
etc.
Ibid.

SECT. 7. No person shall dig or carry away any of the sward, gravel, sand, turf or earth, in or upon any part of the common, public garden, public squares, or common lands, except by permission of the said joint committee of the city council for some public use.

No person to
climb trees, etc.
Ibid.

SECT. 8. No person, except by permission of the said joint committee of the city council, shall climb any of the trees growing, or which shall hereafter be planted, on the common, public garden, public squares, or common lands of the city, or in any street or public

place of the city, or tie any horse or other animal to any of said trees, or post any bills thereon. Feb. 23, 1870.

SECT. 9. No person, except by permission of the said joint committee of the city council, shall in any manner carry, or cause to be carried, upon the common, public garden, common lands, or any public square or place of the city, any dead carcass, ordure, filth, dirt, stones, or any offensive matter whatsoever; and no person shall commit any nuisance on the common, public garden, common lands, or any public square or place of the city. Dirt, stones, or filth not to be placed on common. Ibid.

SECT. 10. No person shall shake or otherwise cleanse, any carpet on the common, public garden, or on any of the common lands, or in any of the public squares or places, streets, lanes, or alleys of the city. Carpets not be shaken on common. Ibid.

SECT. 11. No owner or keeper of any hog, horse, or grazing animal, shall suffer the same to go at large, or feed upon the common, public garden, common lands, public squares, streets, lanes, or alleys of the city. Hogs and other animals not to go on common. Ibid.

SECT. 12. No person shall, without permission of the said joint committee of the city council, carry or cause to be carried upon the common, public garden, or public squares of the city, any wheelbarrow, handcart, or other vehicle, for the conveyance of burdens. Wheelbarrows or handcarts not to go on common. Ibid.

SECT. 13. No person or persons shall, without the consent of the said joint committee of the city council, Games of ball not to be played Ibid.

Feb. 28, 1870.

Vide "Streets,"

p. 776.

cil, engage in games of ball, football, or other athletic sports upon the public garden.

Sermons or addresses not to be delivered.
Ibid.

SECT. 14. No person shall deliver any sermon, lecture, address or discourse, on the common, public garden, public squares, or common lands of the city, without the permission of the said joint committee of the city council.

Flower-beds not to be injured.
Ibid.

SECT. 15. No person shall walk or stand upon any of the flower-beds on the common, public garden, or any public square or common lands of the city, or suffer or permit any dog or other animal belonging to him, or in his charge, to stand or walk upon any of said flower-beds.

Rubbish not to be put in any pond.
Ibid.

SECT. 16. No person, without the permission of said joint committee of the city council, shall throw, or place, any stones, sand, gravel, tan, earth, filth, rubbish, or any other substance, in or upon any pond on the common, public garden, or any public square or common lands of said city, or upon the ice on any pond aforesaid, or cut, or break, or remove the ice therein or therefrom.

Violation of ordinance.
Ibid.

SECT. 17. Any person who shall offend against any of the provisions of this ordinance shall forfeit and pay for each offence a sum not less than one nor more than twenty dollars.

Grass not to be injured.
July 23, 1872.

SECT. 18. No person shall walk, stand or lie on the grass on the common, public garden or any public square or common lands of the city, whenever the

joint standing committee of the city council on the July 23, 1872.
common and public grounds shall prohibit such walk-
ing, standing or lying thereon, and shall notify the
public of such prohibition by a legible notice placed
in those parts of the said common, public garden and
other squares and common lands from which said
committee shall consider it necessary to temporarily
exclude the public.

SECT. 19. Any person who shall offend against any Penalty.
of the provisions of the foregoing section shall forfeit Ibid.
and pay for each offence a sum not less than one nor
more than fifty dollars.

SECT. 20. No cannon or artillery shall be fired by Cannon not to
be discharged
on common,
except, etc.
Sept. 23, 1873.
Vide "Fire-
arms," p. 325.
the militia or others upon the common or public
grounds, unless authorized by the city council or the
mayor, or the commander-in-chief of the militia of
the commonwealth.

SECT. 21. No person, without the permission of the Goods, etc., not
to be sold on
common, etc.
May 29, 1875.
joint standing committee of the city council on common
and public grounds, shall expose for sale or sell any
goods, wares or merchandise on the common, public
garden and public squares of the city.

SECT. 22. No person, without the permission of the Booths and
shows not
allowed.
Ibid.
joint standing committee of the city council on com-
mon and public grounds, shall erect or maintain any
booth, stand, tent or apparatus for purposes of public
amusement or show on the common, public garden or
public squares of the city.

Penalties.
May 29, 1875.

SECT. 23. Any person who shall offend against any of the provisions of the foregoing sections [21 and 22] shall forfeit and pay for each offence a sum not less than one dollar nor more than twenty dollars.

PAWNBROKERS.

STATUTES.

Pawnbrokers to
be licensed.
G. S. c. 83, §§ 23,
29.

1. The mayor and aldermen, or selectmen, of any city or town, which has adopted by-laws therefor, may license suitable persons to carry on the business of pawnbrokers within their respective cities and towns. The license shall contain such conditions and restrictions as may be prescribed by such by-laws.

Licenses to be
signed by city
clerk.
1876, c. 147, § 1.

To set forth
name of person,
nature of busi-
ness, etc.

2. Licenses granted under the foregoing section shall be signed by the clerk of the city or town in which they are granted, and every such license shall be recorded by such clerk in a book kept for that purpose before being delivered to the licensee; such license shall set forth the name of the person licensed, the nature of the business, and the building or place in such city or town in which it is to be carried on, and shall continue in force until the first day of May next ensuing, unless sooner revoked, as provided in said chapter. The clerk issuing any such license shall be entitled to receive for the use of the city or town for each license the sum of two dollars.

Fee for license.

Licenses to ex-
pire on first day
of May.
Ibid. § 2.

3. Such licenses may be granted at any time during the month of April, to take effect on the first day of May then next ensuing, and after the first day of May they may be granted for the remainder of the year ending on the first day of the following May.

Business to be
conducted at
place designated
in license.
Ibid. § 3.

4. No license issued as aforesaid shall be valid to protect the licensee in any building or place other than that designated in the license, unless consent to removal be granted by the mayor and aldermen or selectmen.

Revocation of
license.
Ibid. § 4.

5. Whenever any such license shall be revoked the clerk of such city or town shall note such revocation upon the face of the record of the license, and shall give written notice of such revocation to the holder of the license, said notice to be delivered to him in person or left at the place of business designated in the license.

6. Whoever, not being licensed, carries on such business, or is concerned therein, within such city or town, or being licensed, carries on such business, or is concerned therein in any other place or manner than that designated in his license, or after notice to him that his license is revoked, shall pay a fine not exceeding fifty dollars for each offence.

Penalty for carrying on business without license, etc.
G. S. c. 88, § 30.

7. By an act passed April 5, 1859, the "Pawners bank" was incorporated, the government to be vested in seven directors, five of whom shall be chosen annually by the stockholders, one shall be appointed by the governor of the commonwealth, and one by the mayor of the city of Boston. When the bank has disposable funds it shall loan on all goods and chattels embraced within its rules and regulations in the order in which they are offered, with this exception, that the bank may always discriminate in favor of small loans to the indigent. By chapter 428, of the acts of 1869, the name of the bank was changed to the "Collateral Loan Company."

Pawners bank, one director to be appointed by mayor of Boston.
1859, c. 173.
1865, c. 14.
1869, c. 428.
1876, c. 11.

ORDINANCE.¹

SECTION 1. No person shall carry on the business of a pawnbroker in this city unless he is duly licensed therefor by the board of aldermen.

Pawnbrokers to be licensed.
Aug. 12, 1862.

SECT. 2. Every person carrying on said business shall keep a book, in which he shall record, at the time of receiving any article as a pawn, a description of the article so received, the name, age, and residence of the person from whom, and the day and hour when, he so received it; and that book shall at all times be open to the inspection of the mayor or either of the aldermen, or of any person authorized by the board of aldermen to examine it.

They shall keep a record of their transactions.
Ibid.

SECT. 3. No pawnbroker shall, directly or indirectly, receive any article in pawn of any minor or

Shall not receive any article in pawn from

¹ An ordinance concerning pawnbrokers, passed August 12, 1862.

minors, etc.
Aug. 12, 1862.

Shall exhibit all
articles.

apprentice, knowing or having reason to believe him to be such. All articles taken or held by any pawnbroker shall be exhibited to the mayor, or either of the aldermen, or to any person authorized by the board of aldermen to examine them, whenever a demand is made by either of them for such exhibition.

License shall
designate place
of business, etc.
Ibid.

SECT. 4. All licenses granted under this ordinance shall designate the place where the person licensed may carry on his business; and he shall not engage in or carry on his business under his license in any other place than the one so designated, and all the provisions of this ordinance shall be incorporated into every license which shall be granted under it.

Penalty.
Ibid.

SECT. 5. Any person offending against either of the provisions of this ordinance shall forfeit a sum not exceeding fifty dollars for each offence.

RULES OF ALDERMEN.¹

Superintendent
to be appointed.
March 21, 1870.

SECTION 1. On the first Monday of February, annually, or within sixty days thereafter, there shall be appointed by the mayor, by and with the advice and consent of the board of aldermen, a suitable person, with police powers, as superintendent of pawn-brokerage.

Powers and
duties.
Ibid.

SECT. 2. Said superintendent shall devote his whole time to the business of the department. Under the direction of the committee on licenses, he shall have the general supervision of all matters appertain-

¹ Rules of board of aldermen passed March 21, 1870.

ing to the license of pawnbrokers, dealers in junk and second-hand articles, throughout the city. March 21, 1870.

SECT. 3. He shall keep books, in which he shall register, alphabetically, the names of all pawnbrokers and all dealers in junk or second-hand articles, together with the name and number of the street where they are doing business; and he shall see that each is furnished with a copy of the ordinance relating to his branch of trade. To keep records, etc. Ibid.

SECT. 4. He shall also keep a book, in which he shall register, alphabetically, the names of all who have taken out licenses, or to whom, on petition, license has not been granted, and also those to whom license has been granted, but subsequently revoked, with the name and number of the street where each carries on business. He shall see that all such persons duly licensed keep the requisite books, and in all things conform to the requirements of the laws and ordinances regulating their trade. He shall inspect said books from time to time, as often at least as once a month, making note of such facts as are deemed of importance; and, if suspicions are reasonably connected with any property falling under his observation, he shall immediately report the same to the chief of police. To inspect books of pawnbrokers. Ibid.

SECT. 5. In all cases where persons carry on either of the above trades without license, he shall cause such persons, under the direction of the committee on licenses, to be complained against, and shall attend to their prosecution. To complain of unlicensed persons.

Police to enter
shops and ex-
amine books,
etc.

March 21, 1870.

SECT. 6. Members of the police department, when so directed by the chief, may enter the shop of any pawnbroker or dealer in junk or second-hand articles, and examine their books and the property therein; and if resisted, or refused permission so to do, the case shall be reported to the committee on licenses, and, if the circumstances justify it, the license shall be revoked.

Superintendent
to report
weekly.
Ibid.

SECT. 7. The superintendent of pawnbrokerage shall submit to the committee on licenses, on each Monday morning, a written report of his doings for the previous week, and send a copy of said report to the chief of police.

Office hours.
Ibid.

SECT. 8. He shall be at his office from 9 to 10 A.M. and from 2 to 3 P.M. each day, for the transaction of business connected with his department.

PETROLEUM AND BURNING FLUIDS.

STATUTES.

Inspectors of
petroleum to be
appointed.
1839, c. 152, § 1.

1. The mayor and aldermen of every city, and the selectmen of every town of more than fifteen hundred inhabitants, and of every town of less than fifteen hundred inhabitants, upon the written application of five or more citizens of such town therefor, shall appoint, annually, one or more suitable persons, not interested in the sale of crude petroleum, or in the sale or manufacture of petroleum, earth-rock oil, or in any of their products, to be inspector or inspectors thereof in said city or town, and fix their compensation, to be paid by persons requiring their services under the provisions of this statute, and who, before entering upon the duties of their office, shall be duly sworn. Any inspector guilty of fraud, deceit, or culpable negligence in the performance of his du-

Compensation.

Penalty on in-
spector for

ties, shall be punished by fine not exceeding one hundred dollars, or imprisonment in the county jail or house of correction not exceeding one month, or by both, in the discretion of the court. fraud or negligence.

2. No person shall mix for sale, naphtha and illuminating oils, or shall sell or offer for sale such mixture, or shall sell or offer for sale, except for purposes of re-manufacture, illuminating oils made from coal or petroleum, which will evaporate a gas under one hundred degrees Fahrenheit, or ignite at a temperature of less than one hundred and ten degrees Fahrenheit, to be ascertained by the application of Tagliabue's, or some other approved instrument, and any person so doing shall for each offence be punished by fine or imprisonment, as provided in the first section hereof; and shall also be liable therefor, to any person suffering damage from the explosion or ignition of such oil thus unlawfully sold or kept, or offered for sale; and such oil thus unlawfully sold or kept, or offered for sale, and the casks or packages containing the same, shall be forfeited and sold, one-half of the proceeds of such sale to go to the commonwealth and the other half to the informer. Mixture of naphtha and illuminating oils regulated. 1869, c. 152, § 2. Penalty for violation. Liability in case of explosion, etc. Oil unlawfully sold to be forfeited.

3. For all the purposes of this act, all illuminating oils made from coal or petroleum, having an igniting point of less than one hundred and ten degrees Fahrenheit, to be determined in the manner provided in the second section of this act, shall be deemed to be mixed with naphtha, and shall be branded unsafe for illuminating purposes. Oils unsafe for illuminating purposes to be so branded. Ibid. § 3.

4. Any person who shall sell, or keep, or offer for sale, naphtha under any assumed name, shall, for each offence, upon conviction thereof, be liable to the same penalties provided, and shall be subject to the same liabilities set forth in the first two sections of this act. Penalty for selling naphtha under assumed name. Ibid. § 4.

5. Crude petroleum, or any of its products, may be stored, kept, manufactured or refined in detached and properly ventilated buildings specially adapted to the purpose, and surrounded by an embankment constructed so as to effectually prevent the overflow of said petroleum or any of its products beyond the premises on which the same may be kept, manufactured or refined; said buildings to be occupied in no part as a dwelling; and if less than fifty feet from any other building must be separated therefrom by a stone or brick wall at least ten feet high and twelve inches thick; and any person keeping such articles in any other kind of building, except as is hereinafter provided in the sixth section hereof, shall Crude petroleum and its products, how to be stored, etc. Ibid. § 5. Penalty for violation.

1869, c. 152, § 5. be punished by fine or imprisonment, in the manner provided in the first two sections hereof.¹

Not to be manufactured, stored, etc., without license from municipal authorities.

Ibid. § 6.

License to express manner and locality in which such oils may be stored.

Penalty for storing, etc., without license, etc.

License to expire annually on first of April, and revocable at all times.

Search warrant may be issued upon complaint, etc.

Ibid. § 7.

By whom to be served.

6. No person shall manufacture, refine, mix, store, or keep for sale, any oil or fluid, composed wholly or in part of any of the products of petroleum, in any city or town, except as provided in the fifth section of this act, without a license first having been obtained from the mayor and aldermen of said city, or the selectmen of said town, and in said license there shall be expressed the manner, and the portion of any locality or building in which said articles may be mixed, stored or kept; and whoever mixes, stores or keeps said articles in any one locality, except as aforesaid, without having first obtained a license as herein required, or, having obtained such license, mixes, stores or keeps said articles in a different manner, or in any other portion of said locality or building than is expressed in said license, shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered in any appropriate form of action, to be instituted in the name of the mayor of said city, or of the selectmen of said town; and the license granted in accordance with the provisions of this act shall continue to be in force, from the time of granting the same, until the first day of April next succeeding, unless sooner revoked; and said license shall be revocable at all times by the authorities granting the same.

7. Upon complaint made to the justice of any municipal or police court, or to a justice of the peace, by the mayor, or by an alderman of any city, or by a selectman of any town, or by an inspector appointed under the provisions of this act, or any engineer of a fire department, fireward, chief of police, or city marshal, that he has probable cause to suspect, and does suspect, that any of the articles enumerated in this act are offered for sale, or are deposited and kept within the limits of said city or town, contrary to the provisions of this act, said justice or court may issue a warrant, directed to any such inspector, engineer, or fireward, or to any sheriff, deputy-sheriff, constable or police officer, ordering him

¹ The statute of 1869, c. 152, does not justify the refining of petroleum at any place when a necessary consequence of the manufacture is the emission of vapors which constitute a nuisance at common law by their unwholesomeness and offensive odor. 107 Mass. 188.

to enter any shop, warehouse, manufactory, or any other building specified in the warrant, to make diligent search for such article or articles suspected to be so offered for sale, deposited or kept, and to make return of his doings to said justice or court forthwith.

8. None of the articles enumerated in this act shall be allowed to remain in any street, lane, alley or travelled way, or upon any wharf, or in any yard, or on the grounds of any railroad corporation in any city for a longer time than twenty-four hours, and in any town for a longer time than forty-eight hours, without a special permit from the mayor and aldermen of said city, or the selectmen of said town, or from some person by them duly authorized; and any and all persons so keeping such articles for a longer time shall be punished by a fine of not more than fifty dollars for each and every such offence.

Oils not to remain in street, etc., more than 24 hours, nor in town more than 48 hours, without special permit, under penalty.

Ibid. § 8.

9. The city council of any city, and the inhabitants of any town, may adopt such ordinances, by-laws and regulations, not inconsistent with the provisions of this act, as they may deem reasonable in relation to the manufacture, mixing, storing, keeping or selling, within the corporate limits of said city or town, any of the articles herein enumerated, and may affix penalties for breaches thereof not exceeding fifty dollars for each offence, reasonable notice of which shall be given to all concerned.

Cities and towns may make regulations and affix penalties. Ibid. § 9.

10. No person shall sell, or keep for sale, at retail, for illuminating purposes, any kerosene, refined petroleum, or any product of petroleum, without having the same inspected and approved by an authorized inspector. Any person violating the provisions of this section shall be fined and imprisoned in the manner provided in the first section of chapter one hundred and fifty-two of the acts of the year eighteen hundred and sixty-nine [§ 1 of this digest.]

Kerosene for illuminating purposes not to be sold without inspection, under penalty. 1869, c. 345, § 2.

11. The city council of any city and the inhabitants of any town may adopt such rules and regulations as they deem reasonable in relation to the storage and sale, within the limits thereof, of camphene, or any similar explosive or inflammable fluid, and may affix penalties for breaches thereof, not exceeding twenty dollars for any one offence.

Cities and towns may regulate the storage and sale of camphene, etc. G. S. c. 83, § 51.

ORDINANCES.

PETROLEUM AND ITS PRODUCTS.¹

Application to
be made to the
board of alder-
men to keep,
etc., over 100
gallons.
Sept. 17, 1869.

SECTION 1. Any person desiring to manufacture, refine, mix, store or keep for sale, any oil or fluid, composed wholly or in part of any of the products of petroleum, in a greater quantity than one hundred gallons, in any one place in the city of Boston, except as provided in the fifth section of chapter one hundred and fifty-two of the acts of the year eighteen hundred and sixty-nine, shall make application in writing for a license therefor, to the board of aldermen of said city, and shall state in such application the place, building, or part of a building, for which he desires a license, and whether he desires a license for manufacturing, refining and mixing said articles, or any of them, or a license for storing and keeping them, or both. Such application shall be referred to the chief engineer of the fire department, who shall, within one week from the time of such reference, examine, or cause to be examined, by one of the assistant engineers, the place or building described in such application, and report in writing to the board of aldermen his opinion of the propriety of granting the license applied for.

Examination of
premises to be
made by engi-
neers of fire
department.

No license shall
be granted for
storing, etc.,
upon streets,
wharves, etc.
1869.

SECT. 2. No license shall be granted for manufacturing, refining, mixing, storing or keeping said articles, or any of them, upon any alley, sidewalk,

¹ An ordinance in relation to the manufacture, storage, and sale of petroleum and its products, passed September 17, 1869.

street or wharf, within the limits of the city, nor in any part of a building occupied in whole or in part as a dwelling-house; nor upon any floor of a building above the first floor. Sept. 17, 1869.

SECT. 3. No license shall be granted for mixing, storing or keeping crude petroleum, naphtha, or gasoline in any part of a building above the cellar, unless said articles are contained in metallic vessels securely closed. No license shall be granted for storing, etc., above the cellar of buildings, unless, etc. Ibid.

SECT. 4. No license shall be granted for selling or keeping for sale at retail, for illuminating purposes, any kerosene, refined petroleum, or any product of petroleum, which has not been inspected by the officer appointed for that purpose by the mayor and aldermen. No license shall be granted for selling petroleum not inspected. Ibid.

SECT. 5. Except as hereinbefore expressly provided, licenses may be granted for manufacturing, refining, mixing, storing and keeping said articles, or any of them, in cellars, or upon the first floor of buildings, or in other suitable localities, in such quantities over one hundred gallons, and in such a manner as the board of aldermen may in each case determine, except that no license shall be granted for manufacturing, refining, mixing, storing or keeping said articles, or any of them, upon the first floor of any building in a greater quantity than one hundred gallons, unless the same be contained in metallic vessels securely closed, or the foundations and walls Licenses may be granted for manufacturing, etc., in greater quantities than 100 gallons in suitable localities. Ibid.

Sept. 17, 1869.

of said building be of brick, stone or iron, and the sills or walls of said building be built without apertures for a space of at least one foot above the floor.

Terms of the
license.
Ibid.

SECT. 6. There shall be expressed in said license the name of the person or persons to whom the license is granted, and whether he, or they, are permitted to manufacture, refine and mix said articles, or any of them, or to store and keep them, or both, and a description of the place, building, or part of a building licensed, and any limitations upon the quantity of said articles, or any of them, which may be manufactured, refined, mixed, stored or kept therein, or upon the manner of manufacturing, refining, mixing, storing or keeping the same which the board of aldermen may in each case see fit to impose; and any person so licensed may manufacture, refine, mix, store or keep said articles, or any of them, according to the terms of his license, either on his own account, or on account of any other person. Any person holding such a license shall allow the chief engineer of the fire department, or any of the assistant engineers, or the inspector or inspectors appointed by the mayor and aldermen, to enter the premises described in the license, and take such samples of oils and make such examinations of the premises as said engineers or inspectors deem expedient. Any violation of the terms of said license shall work a revocation of the same, and the board of aldermen may revoke any license, without cause, at any time.

Engineers of fire
department,
and inspectors,
to be allowed to
enter premises.

SECT. 7. The chief and assistant engineers of the fire department shall make complaint to the municipal court of all violations of the provisions of chapter one hundred and fifty-two, and chapter three hundred and forty-five, of the acts of the year eighteen hundred and sixty-nine, and bring suits, in the name of the mayor of the city, against all persons who manufacture, refine, mix, store, or keep for sale any oil, or fluid, composed wholly or in part of the products of petroleum, without the license required by this ordinance.

Duties of engineers of fire department to make complaint of violation of statute.
Sept. 17, 1869.

CAMPHENE AND BURNING FLUID.¹

SECT. 8. No person shall keep for sale, or shall store in any building within the city of Boston, any camphene or burning fluid, without a license from the board of aldermen, under a penalty of not less than one nor more than twenty dollars, for each offence.

Persons to be licensed to keep and sell camphene and burning fluid.
Nov. 3, 1855.
Penalty.

SECT. 9. Every person desiring to obtain a license to sell or store camphene or burning fluid in said city shall make written application therefor to the chief engineer of the fire department, stating in said application the place or building in which he desires to sell or store the said articles, and the manner in which he proposes to keep them, and the chief engineer of the fire department shall examine the premises and report to the board of aldermen his opinion

License, how obtained.
Ibid.

¹ An ordinance relating to camphene, passed November 3, 1855.

Nov. 3, 1855.

of the safety of granting a license, and after his report the board of aldermen may act upon said application.

License, how
long to con-
tinue.
Ibid.

SECT. 10. All licenses granted under the provisions of the previous section shall continue and be in force from the time of granting them until the first day of April next succeeding.

Fee for license.
Ibid.

SECT. 11. Every person, at the time of receiving said license, shall pay therefor the sum of one dollar.

COMPENSATION OF THE INSPECTOR OF PETROLEUM.¹

Compensation
of inspector.
Aug. 23, 1869.

Ordered, That, until otherwise ordered, the compensation of the inspector, appointed under the authority of chapter one hundred and fifty-two of the acts of the year eighteen hundred and sixty-nine, to inspect petroleum, earth-rock oil, and any of their products, shall be as follows: —

For every inspection of a sample of oil, or for a lot of ten barrels, or less, he shall be paid the sum of fifty cents; for every lot of more than ten barrels he shall be paid five cents for each barrel inspected, after the barrel has been placed in position and the bung removed.

¹Order of the board of aldermen, passed Aug. 23, 1869.

POLICE.¹

PROVISIONS OF GENERAL STATUTES.

1. A city or town may establish and keep a watch and determine the number and qualifications of the persons to be employed for that purpose. The mayor and aldermen, or selectmen, shall appoint a suitable person to be officer of the watch, and direct the manner in which watchmen shall be equipped. The expense of the watch shall be defrayed in like manner as other town charges.

Watch, cities,
etc., may
establish.
G. S. c. 23, § 1.

Appointment
and expenses.

2. The watch shall see that all disturbances and disorders are prevented and suppressed. During the night-time they may examine all persons abroad whom they have reason to suspect of any unlawful design, demand of them their business abroad, and whither they are going; may disperse any assembly of three or more such persons, and enter any building for the purpose of suppressing a riot or breach of the peace therein. Persons so suspected and not giving a satisfactory account of themselves, persons so assembled and not dispersing when ordered, and persons making, aiding, or abetting in a riot or disturbance, may be arrested by the watch, and shall thereupon be safely kept, by imprisonment or otherwise, until the next morning, and then taken before a police court or some trial justice, to be examined and proceeded against.

Duties and
powers of.
Ibid. § 2.

3. Police officers and officers and members of the watch, in any city or town, when on duty, may carry such weapons as the mayor and aldermen of such city, or the selectmen of such town, shall authorize. Officers and members of the watch, when on duty, shall wear such badge of office as the mayor or selectmen direct, and shall walk the rounds in and about the streets, lanes, wharves, and principal inhabited parts of the city or town, to prevent danger by fire, and to see that good order is kept.²

Police, etc., to
be armed.
1864, c. 110, § 1.
G. S. c. 23, § 3.

¹ A municipal corporation is not liable for negligent or unlawful acts of a police officer even if done in the enforcement of an ordinance of the city. 1 Allen, 172.

² For description of weapons, badges, and uniforms worn by the Boston police, see rules and regulations for the government of the police department, passed by the board of aldermen.

Selectmen, etc.,
may order
watch, etc.,
where none is
established.
G. S. c. 23, § 4.

4. The mayor and aldermen, or selectmen, of any place where in no watch as above provided is established, may, from time to time, order a suitable watch to be kept in their place, and warn all persons liable to watch and ward duty to perform the same. They may direct the number of the watch, the places and hours for keeping the same, may order in writing any constable or officer of the watch to warn such watch, either by himself or by some person therefor by him appointed, and to see that all persons so warned attend and perform their duty.

Persons liable
to watch and
ward.
Ibid. § 5.

5. Every male person of the age of eighteen years or upwards, being able of body, or having sufficient estate to hire a substitute, and not exempt, shall be liable to watch and ward in his city or town, and shall perform the duties, be subject to the liabilities, and have the powers of watchmen as the same are defined in this chapter.

Persons exempt.
Ibid. § 6.

6. Justices of the peace, mayors, aldermen, selectmen, sheriffs, settled ministers of the gospel, and persons living more than two miles from the place where such watch and ward is kept, shall be exempt.

Penalty on per-
sons liable, etc.,
refusing, etc.
Ibid. § 7.

7. Persons liable to watch and ward, and without reasonable excuse neglecting or refusing to appear and do duty personally, or by sufficient substitute, and constables or officers or members of the watch refusing to execute and observe proper orders, shall forfeit ten dollars, to be recovered by complaint to the use of the commonwealth, or by action of tort to the use of the city or town.

Neglect or re-
fusal to aid
officers, how
punished.
G. S. c. 163, § 18.

8. Whoever, being required in the name of the commonwealth, by a sheriff, deputy-sheriff, coroner, constable, police officer, or watchman, neglects or refuses to assist him in the execution of his office in a criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in a case of escape or rescue of persons arrested upon civil process, shall be punished by imprisonment in the jail not exceeding one month, or by fine not exceeding fifty dollars.

Falsely assum-
ing to be an
officer.
Ibid. § 13.
10 Cush. 61.

9. Whoever falsely assumes or pretends to be a justice of the peace, sheriff, deputy-sheriff, coroner, constable, police officer, or watchman, and takes upon himself to act as such, or to require any person to aid or assist him in a matter pertaining to the duty of

any such officer, shall be punished by imprisonment in the jail not exceeding one year, or by fine not exceeding four hundred dollars. G. S. c. 163, § 18.

10. Whoever aids or assists a prisoner in escaping, or attempting to escape, from an officer or person who has the lawful custody of such prisoner, shall be punished by imprisonment in the jail not exceeding two years, or by fine not exceeding five hundred dollars. Aiding prisoner to escape from officer, how punished. Ibid. § 12.

SPECIAL STATUTES.

11. The act of eighteen hundred and one, chapter twenty-six, authorized the selectmen of the town of Boston (whose powers, by the thirty-third section of the city charter, are transferred to the board of aldermen), from time to time, to appoint such a number of the inhabitants, to be watchmen by night, in the town of Boston, as they should judge expedient; to be paid at the charge of that town; and the said selectmen were also further authorized and empowered, from time to time, to appoint a head constable to superintend said watch, as also a constable for each division thereof; and the several constables of divisions were required to report every morning an account of their doings, and of the state of the town during the night, to the said head constable, in order that the same might be communicated to the chairmen of the selectmen daily. Board of aldermen may appoint watchmen. 1801, c. 26, § 1. 1821, c. 110, §§ 1, 13. 1854, c. 448, § 33.

12. The head constable, the several constables of divisions, and the watchmen appointed by virtue of the said act, shall have the same powers, and shall be held and obliged to perform the same duties, as are required of watchmen, by a law of this commonwealth, passed March the tenth, seventeen hundred and ninety-seven, entitled, "An act for keeping watches and wards in towns, and for preventing disorders in streets and public places." Powers and duties of police men. 1801, c. 26, § 2. 1796, c. 82, § 2.

13. The act of seventeen hundred and ninety-six, chapter eighty-two, referred to in the preceding section,¹ gave the power Powers and duties of police men.

¹ Whether the provisions of the act of 1796, c. 82, in relation to the powers and duties of watchmen, are still in force in Boston, by virtue of the act of 1801, c. 26, § 2, or whether the provisions of the General Statutes, c. 23, are

- 1796, c. 82, § 2. to direct and order a suitable watch or watches to be kept nightly, from and after nine o'clock in the evening, until sunrising in the morning; and also in the daytime and evenings, when it should be thought necessary. And the watch were to be charged "to see that all disturbances and disorders in the night be prevented and suppressed; and to examine all persons whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful intention or design, of their business abroad at such season, and whither they are going; and in case they give not reasonable satisfaction therein, then to secure, by imprisonment or otherwise, all such disorderly and suspicious persons, to be safely kept until morning; then to carry them before one of the next justices of the peace to be examined, and proceeded against, according to the nature of their offences, as is by law directed. And such watchmen shall walk the rounds in and about the streets, wharves, lanes, and principal inhabited parts within such town or district, to prevent any danger by fire, and to see that good order is kept, taking particular observation and inspection of all houses and families of evil fame, and shall strictly observe the charge to be given them as aforesaid. And each constable, when attending watch or ward, shall carry with him the usual badge of his office." The same act also prescribed, that whenever a watch should be appointed and agreed upon, different from a constable's watch, the person appointed officer of the watch, to take the charge and command of such watch, as the badge of his office, should carry a quarter pike, with a spire on the top thereof; and that every watchman, as well in this as in the constable's watch, should carry staff with a bill fastened thereon, as was usual.
- To prevent and suppress disturbances and disorders, etc.
- To walk the rounds.
- To carry his badge of office.
- To carry quarter pike.
Ibid. § 4.
- To carry staff.
- Expenses of, etc., how raised.
1801, c. 26, § 3.
14. The expenses that may be incurred, by reason of the establishment of the watch aforesaid, shall be raised, levied, and collected, as the other expenses of said city are or may be

applicable to Boston, superseding the former enactment, — *quære*. The act of 1796, c. 82, is among the general laws that were repealed by the Revised Statutes, and the act establishing the Revised Statutes is repealed by the General Statutes. The provisions of the General Statutes on this subject are given, *ante*, §§ 1-10.

raised, levied, or collected; any law to the contrary notwithstanding. 1821, c. 10, § 1.

15. Whenever the board of aldermen of the city of Boston shall establish a watch within said city, in pursuance of the preceding provisions, the said board of aldermen may, and they are hereby authorized to set such watch, at such hour after sunset as they shall judge expedient; and from and after such hour the said watch shall and may exercise all the powers given in and by the several acts aforesaid, anything in the said acts to the contrary notwithstanding.

Board of aldermen may set the watch at such hour after sunset as they shall judge expedient.
1833, c. 62.
See p. 13, ante.

16. By an act passed in 1838 the mayor and aldermen of Boston were authorized, from time to time, to appoint such police officers for said city as they might judge necessary, with all or any of the powers of constables of said city, except the power of serving and executing any civil process; the said police officers to hold their offices during the pleasure of the mayor.¹

Appointments of police officers. Their powers and duties.
1838, c. 123.
1854, c. 448, § 49.
9 Met. 259.
12 Met. 233.

17. By an act passed in 1853 the city council of the city of Boston were authorized and empowered to unite, by ordinance, the watch and the police departments of the said city into one depart-

Watch and police united.
1853, c. 354, § 1.

¹ The law does not require that a police officer of the city of Boston, appointed pursuant to St. 1838, c. 123, should be sworn to the faithful discharge of the duties of his office; and therefore a party indicted for assaulting such police officer, and obstructing him in the discharge of the duties of his office, cannot defend by showing that he had never been sworn. *Commonwealth vs. Dugan*, 12 Met. 233; also 99 Mass. 592. See, however, the ordinance passed December 23, 1862, page 617, § 3.

L. was appointed by the mayor and aldermen of Boston, under St. 1838, c. 123, "a police officer (at the National Theatre) with the power of a constable, except the power of serving civil process." Held, that if L.'s power was limited to a part of the city, yet that it was not limited to the space within the walls of the theatre, but extended to the environs, so far as the special vigilance of an officer might be required to keep the peace and preserve order among persons frequenting the theatre, or carrying others to and from it, or supplying refreshments; and also to shops, stalls, and stands kept in the vicinity, for the purpose of supplying refreshments. *Commonwealth vs. Hastings*, 9 Met. 257.

The statute of 1852, c. 162, extended the provisions of this section to all the cities and towns in the commonwealth. Under that act the selectmen of a town appointed a person a police officer of the town, "to continue in said office until the next annual town meeting," and the appointment was held valid. *Commonwealth vs. Higgins*, 4 Gray, 34. See also 99 Mass. 592.

1853, c. 354, § 1. ment, and to organize the same, and from time to time to establish regulations therefor, not repugnant to the laws of the commonwealth.

Powers and duties of chief of police and subordinate officers. Ibid. § 2.

18. The chief of the police, who may be authorized to act by virtue of such ordinance, shall have and exercise all the powers and duties which by the laws now in force may be had and exercised by the head constable of the watch of the city of Boston; and the deputy chiefs of the police, and captains and lieutenants of the police, who may be authorized to act by virtue of such ordinance, shall have and exercise all the powers and duties which, by the laws now in force, may be had and exercised by the constables of the several divisions of the watch of the city of Boston; and the said officers, and the policemen, who shall be appointed under the provisions of such ordinance, shall have and exercise all the powers and duties which may be had and exercised either by the watch of the city of Boston, or by the police of the said city, by virtue of the seventeenth chapter of the revised statutes of this commonwealth and other existing laws.¹

Duties, etc., of board of aldermen in relation thereto. Ibid. § 3.

19. The mayor and aldermen of the city of Boston shall have and exercise all the powers and duties in relation to the officers and policemen mentioned in the foregoing section, which, by the laws now in force, they may have and exercise in relation to the watch and watchmen and the police of the city of Boston.²

LOCK-UPS.

Lock-up to be provided by towns, etc. 1862, c. 216, § 16.

20. Every town containing more than three thousand inhabitants shall, and every town may, keep and maintain a secure and convenient lock-up, or place of security, to which such persons as may be arrested or detained by an officer, without a warrant, may be committed; and a police court, or justice of the peace, may

¹ The General Statutes, chapter twenty-third, contain the provisions of the seventeenth chapter of the Revised Statutes. See, *ante*, §§ 1-10.

² This act was passed May 21, 1853, and was to be void unless accepted by the city council of the city of Boston within sixty days after its passage. It was accepted by the city council June 2, 1853.

commit, upon continuation for further examination, any prisoner charged with a bailable offence, and not recognizing, to the lock-up in the town in which the court is held, whenever in his opinion it may be deemed safe and commodious and costs may be saved thereby.

21. For the expenses of detention and support in cases provided in the above section, there may be charged upon the warrant or other precept, if any, fifty cents a day, or at that rate for the fractional part of a day, and no more, which shall be paid to the town or city maintaining the same. No charge shall be made for the detention and support of persons committed to any lock-up except as herein provided.

Expenses of keeping persons therein, how paid.
1862, c. 216, § 17.
1876, c. 159, § 2.

22. It shall be the duty of mayors of cities, and of the selectmen in towns, now required by law to keep and maintain a lock-up, to appoint annually a keeper, who shall have the custody and care of the lock-up, and of persons committed thereto. Such appointment shall be in writing, and for the term of one year, unless sooner removed; and shall be recorded in the city or town clerk's office. The person appointed shall signify his acceptance of the appointment within three days after he has notice thereof, and shall be sworn to the faithful discharge of the duties of his office.

Keepers of lock-ups to be appointed.
1873, c. 175, § 1.

23. Persons appointed keepers under the first section of this act shall have all the powers of police officers, and shall have such compensation as may be fixed by the said mayors and selectmen at the time of their appointment, to be paid by the city or town; and there may be charged on the warrant or other precept of the officer, if any, a sum not exceeding fifty cents a day for keeping, and one dollar a day for support of each person committed, which shall be paid to the city or town; and no other charge for keeping or custody shall be made; and there may be allowed and charged a sum not exceeding one dollar for each person detained without a warrant, to be paid to the city or town, and in such case no other charge shall be made for detention or custody.

Keepers to have power of police officers.
Ibid. § 2.

24. Any city or town now required to keep and maintain a lock-up, which shall neglect to provide and maintain the same for three months, shall forfeit ten dollars for each month's neglect thereafter, to be recovered by indictment. And if the said mayors or selectmen for three months neglect to appoint a lock-up keeper,

Penalty on town for neglecting to maintain lock-up or appoint keeper.

1873, c. 175, § 3. they shall forfeit ten dollars a month for each month of neglect.

Lock-ups to be accessible to sheriffs and other officers. Ibid. § 4.

25. The lock-ups of the cities and towns of the commonwealth shall at all reasonable hours be accessible to the constables of the commonwealth [now known as state detectives], sheriffs, constables and police officers of cities and towns, for any legal and proper use, and any lock-up keeper who shall neglect to keep such lock-up accessible for such use, or who shall refuse to permit the officers mentioned in this act to use said lock-ups for all legal and official purposes, shall forfeit and pay a fine of not less than five nor more than twenty dollars, to be recovered upon complaint before any court of competent jurisdiction.

STATE DETECTIVE FORCE.

Appointment of state detectives. 1875, c. 15, §§ 1, 5.

26. By an act passed in 1875 the governor of the commonwealth, with the consent of the executive council, was required to appoint an officer to be entitled the chief of the state detective force, and a number of state detectives, not exceeding thirty; the said chief and detectives to have and exercise throughout the commonwealth, all the common law and statutory powers of constables, except the service of civil process, and also all the powers given to the police or watchmen by the statutes of the commonwealth.

Constables and police officers to aid detectives, when called upon. Ibid. § 9.

27. It shall be the duty of the constables of the several towns and cities, city marshals, chiefs of police and all other police officers, to aid the governor or said chief and said detectives in the discharge of their duties, whenever called upon for that purpose: *provided, however,* that said constables of the several towns and cities, city marshals, chiefs of police and other police officers shall not be ordered out of their respective cities and towns. And any constable, marshal or police officer refusing to aid the governor, said chief or detectives, when called upon so to do, shall be punished by imprisonment in the jail not exceeding three months, or by fine not exceeding one hundred dollars.¹

¹ For provisions in relation to the appointment of railroad police see "Railroads," p. 642.

ORDINANCES.¹

SECTION 1. The police department shall consist of the chief of police, one deputy chief of police, one captain of police for each police district, and such number of lieutenants, detectives, sergeants, patrolmen and stewards, as the board of aldermen, with the approval of the mayor, shall deem necessary; they shall be appointed by the mayor and aldermen, and take rank in the order in which they are named; and they shall severally hold their offices until vacated by death or resignation, or until they may be removed by the mayor; and they shall perform all the duties, and be subject to all the rules and regulations, which now are, or may hereafter be, prescribed by the ordinances of the city council, or the orders of the board of aldermen.

Police department to consist of whom.
March 17, 1863.
April 11, 1863.

Appointment, rank, term of office, and powers and duties.

SECT. 2. Whenever there is a vacancy in any of the offices aforesaid, the mayor shall nominate to the board of aldermen, for their confirmation or rejection, persons to fill them; and if the board of aldermen reject any such nominations, the mayor shall make new nominations, to fill the places so vacant, within two weeks after such rejection.

Vacancies, when and how filled.
March 17, 1863.
April 11, 1863.

SECT. 3. Before entering upon his duties, each

Police officers to be sworn.

¹ An ordinance on the police, passed December 23, 1862; an ordinance in addition thereto, passed March 17, 1863; an ordinance in amendment thereof, passed April 11, 1863; an ordinance in addition thereto, passed June 17, 1870; an ordinance in amendment thereof, passed May 23, 1875.

Dec. 23, 1862.

officer so appointed and confirmed shall be sworn to the faithful discharge of the duties assigned him.

Chief of police,
his powers and
duties.
Ibid.

SECT. 4. The chief of police shall be the head of the department of police, and shall have entire control of the department, its officers and members, and of all constables and other officers when engaged in the service of the city. He shall devote his whole time to the municipal affairs of the city of Boston, to preserve the peace, order, and cleanliness thereof, and to this end he shall execute and enforce the special laws relating to the city, the ordinances and orders of the city council, and the orders of the mayor and of the board of aldermen. He shall take notice of all nuisances, impediments, obstructions, and defects in the streets, lanes, alleys, courts, public places and squares of the city, and shall remove the same, or take all proper measures in relation thereto, according to the laws and ordinances under the direction of the board of aldermen.¹

Bond of chief of
police.
Ibid.

SECT. 5. The chief of police shall, before entering upon the duties of his office, give to the treasurer of the city of Boston, a bond in the sum of five thousand dollars, with sufficient sureties, in a like sum, for the faithful performance of the duties of his office.

¹ Where the duty of a police officer is defined as "to superintend the police of the town, and to notice all offences against the by-laws of the town, and to cause prosecutions to be commenced against all offenders against the same," it is not restricted to prosecutions for offences against such by-laws. 98 Mass. 4.

SECT. 6. The chief of police shall keep full and complete records of the business of the department; and for that purpose shall nominate in the month of February or March, annually, to the mayor, a clerk of the department, which nomination shall be sent to the board of aldermen for confirmation, and, if approved by them, the person so nominated and confirmed shall, before entering upon the duties assigned him, be sworn to the faithful discharge of his duties, and the chief of police shall, as often as once in three months, and at all times when specially required, make a report of the doings of his department.

Chief of police
to keep records.
Dec. 23, 1862.

Clerk.

Oath.

Chief of police
to make reports.

SECT. 7. The chief of police and the other officers, clerk and members of the department shall receive such compensation as the city council may from time to time determine. They shall account to the city treasurer for all fees received as witnesses on complaints or prosecutions, and in cases in which the city is a party; but when summoned, and in attendance as witnesses, for the government in the county of Suffolk, before the grand jury, or in the superior court for the transaction of criminal business, they may, when off duty, receive for their own use, and without accounting to the city treasurer therefor, one attendance fee a day, and no more; and from their stated compensations shall be deducted all fines or abatements incurred for disobedience of the rules and regulations made for the government of the department as therein provided.

Compensation.
Witness fees.
Ibid.
9 Gray, 78.

See § 12.

Fines and
abatements.
Dec. 23, 1862.

SECT. 8. The office of chief of police shall be

Office of chief

of police to be
kept open.
Dec. 23, 1862.

open at all suitable times, under the direction of the board of aldermen, for the purpose of receiving complaints of the inhabitants respecting offences against the laws and ordinances.

Station-houses
to be always
open, etc.
Ibid.

SECT. 9. The several station-houses of the police shall be open at all hours of the day and night for the purpose of receiving complaints from the inhabitants respecting offences against the laws of the commonwealth and ordinances of the city; and the chief of police, and the deputy chiefs of police, shall cause proceedings to be instituted for the prosecution of violations of the laws and ordinances, and attend to the trial of the same; and each member of the department shall devote his entire time to the municipal affairs of the city, the preservation of order, and the maintenance of the peace thereof; and they shall enforce the laws of the commonwealth, the special laws and ordinances of the city of Boston, and discharge such other duties as, by special orders, they may be required to perform.

Police to prosecute violations
of law.

To enforce the
laws, etc.

Board of aldermen may make
further rules
and regulations.
Ibid.

SECT. 10. The board of aldermen may make, from time to time, such further rules and regulations for the government, disposition, and management of the police, as they may deem expedient: *provided*, such rules and regulations are not inconsistent with the laws of this commonwealth, or the laws and ordinances of the city of Boston.

Policemen on

SECT. 11. All the duties heretofore required by the

laws of the commonwealth, or the laws and ordinances of the city of Boston, or orders of the mayor or board of aldermen, to be performed by watchmen, shall be performed by the policemen who are detailed for night duty.

night duty to do
duty of watch-
men.
Dec. 23, 1862.

SECT. 12. All moneys received by police officers for fees as witnesses, and paid by them into the city treasury,¹ shall be kept as a separate fund until the seventeenth day of June, in the year eighteen hundred and eighty, and be invested and managed by the mayor, treasurer, and auditor of the city, for the time being, who shall be trustees thereof. The income of the said fund shall be applied to the relief of persons who have received an honorable discharge from the police force by reason of sickness, age, or other inability, and who are, in consequence thereof, in necessitous circumstances; and also to the relief of the widows and orphans, in necessitous circumstances, of police officers who have died while in the service of the city. Said trustees may make such rules and regulations for the appropriation and disbursement of the interest of said fund as they may deem expedient, subject, however, to such orders or ordinances as the city council may from time to time adopt.²

Fees received
by police to con-
stitute a chari-
table fund.
June 17, 1870.
May 28, 1875.

¹ A city ordinance giving to police officers a fixed salary, and requiring them to pay over to the city the fees received by them as witnesses, or for penalties in criminal cases, or for the service of any criminal process, or for any services in behalf of the city, is not contrary to public policy. 9 Gray, 78.

² For condition of this fund see annual report made to the board of aldermen.

PORTERS.

STATUTES.

Selectmen
(board of alder-
men) to appoint
porters.
1741, § 1.
1796, c. 69.

1. An act for the better regulating porters employed within the town of Boston,¹ passed in seventeen hundred and forty-one, and originally to continue for seven years, and no longer, but made perpetual March the seventh, seventeen hundred and ninety-seven provided, —

To regulate
their wages.

That the selectmen² of the town of Boston, for the time being, shall have full power and authority to order what number, and who, shall be employed, and take upon them the business of carrying goods, wares, and merchandises, for pay or wages, as common porters within the said town; and what rate or price such persons shall ask, receive, and take for their labor, service, and attendance, according to the distance of place or other circumstances, the selectmen shall order and ascertain; all which persons, so admitted by the selectmen, shall at all times, when in the service or doing the business of porters, wear a badge or ticket, with the figure of a pine-tree marked thereon, on some part of his upper garment or girdle; which badge or ticket shall be numbered, and a fair entry of each porter's ticket made in the selectmen's books, as also the wages they are to ask and receive, within ten days after the approbation of the selectmen as aforesaid.

Porters to wear
badges.

¹ The preamble of this act was as follows:—

“ *Whereas*, the trade and business managed in the town of Boston, between the inhabitants thereof and others trafficking there, occasions many persons to resort to, and attend about, the wharves, docks, and other parts of the town, to convey and carry goods, wares, and merchandises, from place to place, some of whom are not so well known as such an employment requires, others of no good character, yet oftentimes have goods of a considerable value put into their custody for conveyance as aforesaid, and some taking upon them the business of porter, impose upon those making use of them, more especially strangers, by exacting exorbitant wages for their labor, or refusing business, though not before employed, if they cannot have their unreasonable demands: therefore, to avoid such inconvenience for the future, Be it enacted,” etc.

² By the city charter, § 33, the powers previously vested in the selectmen are vested in the board of aldermen.

2. That whosoever shall presume to take up the business and employ of a common porter, and convey or carry goods and merchandise from place to place, within the town of Boston, for hire or wages, without being admitted by the selectmen as aforesaid, shall forfeit and pay the sum of twenty shillings for every time he shall be convicted thereof, before any one of his majesty's justices of the peace, within the county of Suffolk, at Boston aforesaid; the one-half of which fine or forfeiture should be disposed of to and for the use of the poor of the town of Boston, the other one-half to him or them that shall inform and sue for the same.

Penalty for persons unlicensed acting as porters.
1741, § 2.

3. That whosoever, being admitted as a porter as aforesaid, shall ask, take, and receive any more than what the selectmen shall allow for any work or service, shall, for every such exaction, forfeit and pay the sum of twenty shillings, to be recovered and disposed of as hereinbefore directed; and if any person admitted and approved of as aforesaid, as a common porter, shall officiate or concern himself in the business of transporting goods or merchandise, not having his badge or ticket, shall, for every such breach of the said act, forfeit and pay the sum of twenty shillings, to be recovered and disposed of as aforesaid.

Penalty for asking more than selectmen allow for services.
Ibid. § 3.
Penalty for appearing without a badge.

4. That the selectmen shall require and take bond of each one of the porters admitted as aforesaid, with sufficient surety, in a sum not exceeding fifty pounds, for their orderly and faithful acting in the business; more especially their safe conveying and delivering such goods as shall be committed to them; and that upon complaint made to the selectmen that any whom they may have admitted as aforesaid do not behave and conduct themselves orderly, peaceably, and quietly towards their employers, it being made to appear, the party accused being seasonably notified thereof, such person may be removed, and other meet and orderly person admitted in his room.

Security to be given by porters.
Ibid. § 4.
They may be removed for disorderly conduct.
See charter, § 33.

PRINTING.

ORDINANCES.¹

A joint standing committee on printing to be appointed.
Dec. 24, 1846.
Dec. 29, 1866.
April 11, 1868.

SECTION 1. There shall be appointed annually, in the month of January, a joint standing committee of the city council, to be called the committee on printing, consisting of two members of the board of aldermen, and three members of the common council, whose duty it shall be to contract for the city printing, to see that the work performed, and the materials provided, are in conformity with the terms of the contract; and to approve all bills for printing. All contracts for city printing shall be approved and signed by the mayor.

Care and custody of city documents.
Sept. 29, 1874.
Dec. 8, 1874.

SECT. 2. The joint standing committee of the city council on printing shall, except when otherwise specially ordered by the city council, designate the number of public documents, books, or pamphlets, the printing of which for the use of the city council has been or may be, from time to time, duly authorized. And the city messenger shall, subject to such rules and regulations as the said committee may adopt, have the care, custody, and distribution of said documents, books, and pamphlets: *provided*, that said committee may authorize the sale, at an approximate cost price, of any surplus bound copies

¹ An ordinance relating to printing, passed December 24, 1846; amended December 29, 1866, April 11, 1868; an ordinance in addition thereto, passed July 11, 1871; an ordinance in addition thereto, passed September 29, 1874; amended, December 8, 1874.

of any of such documents, books or pamphlets. All documents, books, or pamphlets printed for the use and at the expense of the several executive departments of the city government shall be under the care and custody of the heads of the departments for which they are printed, subject, however, at all times, to the control of the city council.

All Sept. 29, 1874.
Dec. 8, 1874.

SECT. 3. In the month of July, in the year 1871, the mayor shall nominate, and, by and with the advice and consent of the joint standing committee of the city council on printing, appoint, a superintendent of printing for the city of Boston. Said superintendent shall hold office for a term of three years from the date of his appointment, and until his successor is appointed, or he is removed. He may be removed at the pleasure of the mayor; and vacancies may be filled at any time for the unexpired term, in the same manner as the original appointment. Said superintendent shall receive such compensation as the city council may from time to time determine. He shall give bonds in the penal sum of five thousand dollars, for the faithful performance of his duties under this ordinance.

Appointment of
Superintendent.
July 11, 1871.

Removal.

Bonds.

SECT. 4. The said superintendent shall be a practical printer, well versed in the various branches of the art of printing and bookbinding; and he shall not be interested, directly or indirectly, in any contract for printing, binding, or stationery for the city government of Boston, or any department thereof.

To be a practical
printer.
Ibid.

To keep account of work.
July 11, 1871.

SECT. 5. All requisitions for printing and binding, made by the officers of the several departments of the city government, shall be sent to the superintendent of printing, who shall keep an account of the same in the order in which they are received. It shall be his duty to examine the work designated in the requisitions without delay; and if, in his opinion, any alterations are required, either in the form of the work or the quantity ordered, he shall return the requisitions to the officer signing the same, and specify the alterations which shall be made. In case of any disagreement between the officer making the requisition and the said superintendent, the matter shall be referred to the committee on printing, whose decision shall be final on all questions arising under this ordinance, or the contract for printing, unless overruled by the city council.

To purchase paper, stationery, etc.
Ibid.

SECT. 6. The said superintendent shall purchase, from time to time, under the direction of the committee on printing, all the stationery required for the city council and the several departments of the city government, and also all the paper or other stock used for the city printing, and shall make such arrangements for the storage and safe-keeping of the same as the committee on printing may direct.

Shall supply officers' requisitions.
Ibid.

SECT. 7. The said superintendent shall furnish, upon the requisition of any properly qualified officer of the city council, or department of the city government, such stationery as may be required for the office from which such requisition is sent. The req-

sitions shall specify the appropriation to which the articles ordered are to be charged, and upon the delivery of said articles by the superintendent, the officer receiving the same shall sign a receipt, which shall be filed by the superintendent. July 11, 1871.

SECT. 8. The said superintendent shall furnish to the city printers, from time to time, paper and other stock, which may be required to comply with the requisitions for city printing. He shall keep an account of the quantities so furnished, — charging the printers with the same, and crediting them with the amounts used in the city work. Shall furnish city printers with stock. Ibid.

SECT. 9. The said superintendent shall supervise the execution of the city printing, see that it is performed with neatness and despatch, inspect the work when executed, and report any neglect of duty or carelessness on the part of the printers to the committee on printing. He shall also supervise the execution of all orders for binding, folding, stitching, stereotyping, lithographing, and engraving. To supervise printing and binding. Ibid.

SECT. 10. The bills made out by the city printers for work performed under their contract with the city shall be sent first to the said superintendent of printing, who shall make a careful examination of them, and see that they are in accordance with the terms of the contract. If said bills are correct, he shall certify the fact, and transmit them without delay to the committee on printing. He shall also certify to the correctness of the bills for stationery, To examine and approve all bills for work. Ibid.

July 11, 1871.

paper, and other stock, and transmit them, on the fifteenth of each month, to the committee on printing.

To act as clerk
of committee on
printing.
Ibid.

SECT. 11. The said superintendent shall act as clerk to the committee on printing, and shall perform such other services, not herein designated, as the committee may direct.

RAILROADS.

STATUTES.¹

PROVISIONS APPLICABLE TO ROADS OPERATED BY STEAM OR ANIMAL POWER.

Commissioners
to examine con-
dition of road,
upon complaint,
etc., of city and
town authori-
ties.

1874, c. 372, § 10.

1. Upon the complaint and application of the mayor and aldermen of any city, or the selectmen of any town, within which any part of any such railroad is located [*i. e.*, roads operated by steam or animal power], it shall be the duty of the railroad commissioners to make an examination of the condition and operation thereof; and if twenty or more legal voters in any city or town shall, by petition in writing, request the mayor and aldermen of such city, or the selectmen of such town, to make the said complaint and application, and the mayor and aldermen, or the selectmen, refuse or decline to comply with the petition, they shall endorse upon the petition the reason of such non-compliance, and return it to the petitioners; and the petitioners may thereupon, within ten days of such refusal and return, present the petition to said commissioners; and said commissioners shall, if upon due inquiry and hearing of the petitioners they think the public good

¹Sections numbered 1 to 47 in this digest are extracted from the "General Railroad act" of 1874, c. 372, as amended by Sts. 1875, cc. 214 and 231 and St. 1876, c. 73.

demands the examination, proceed to make it in the same manner ^{1874, c. 372, § 10.} as if called upon by the mayor and aldermen of any city or the selectmen of any town. Before proceeding to make such examination in accordance with such application or petition, said commissioners shall give to the petitioners and the corporation reasonable notice in writing of the time and place of entering upon the same. If upon such examination it shall appear to said commissioners that the complaint alleged by the applicants or petitioners is well founded, they shall so adjudge, and shall inform the corporation operating such railroad of their adjudication.

PROVISIONS ALPLICABLE TO ROADS OPERATED BY STEAM.

LOCATION, ETC., OF ROADS IN BOSTON.

2. In the application of this act to the fixing of routes or the location, construction, maintenance and operation of railroads in the city of Boston, unless it is otherwise provided in such section, the duties imposed by any section of this act upon the mayor and aldermen of a city, or upon the selectmen of a town, or upon the county commissioners as a tribunal of original jurisdiction, shall devolve upon the board of aldermen of said city; and when a jury is required, application therefor shall be made to the superior court in the manner prescribed in section twenty-nine of chapter forty-three of the General Statutes; and duties devolved upon the county commissioners by reference or appeal from the mayor and aldermen or selectmen shall, in cases arising in said city, devolve upon the board of railroad commissioners.

Location and
construction of
railroads in
Boston.
Ibid. § 5.

FIXING OF ROUTES.

3. The directors shall prepare a map of the proposed route on an appropriate scale, with a profile thereof on a vertical scale of ten to one as compared with the horizontal scale; and with the report of a skilful engineer, based on actual examination and survey, showing the kind and amount of excavation, filling, bridging and masonry required, the proposed grades, the number of highways and other railroads, if any, and of navigable streams and tide-waters, if any, to be crossed, and the manner proposed for

To prepare map
of route, obtain
report of engi-
neer and esti-
mate of cost of
construction.
Ibid. § 23.

1874, c. 372, § 23. crossing the same, which must be conformable to the provisions of section eighty-five [St. 1874, c. 372, relating to the crossing of one railroad over another], the general profile of the surface of the country through which the road will pass, the feasibility of the route, the manner of constructing the road, and a detailed estimate of the cost of construction.

To submit map,
etc., to mayor
and aldermen.
Ibid. § 24.

Hearing to be
had.

Route may be
agreed upon.
Ibid. § 25.

If agreement is
not made, route
may be fixed by
commissioners.
Ibid. § 26.

Route thus fixed
may include
spurs and
branches.
Ibid. § 27.

4. The directors shall submit said map and report of the engineer to the selectmen of any town, and the mayor and aldermen of any city named in the articles of association; such selectmen or mayor and aldermen shall thereupon appoint a place and time for a hearing, of which notice shall be given by publication in one or more newspapers published in the county for two successive weeks, the last publication to be at least two days prior to the hearing, and by posting copies of the notice in at least two public places in the town or city at least two weeks before such hearing.

5. Whenever the selectmen of any town, or the mayor and aldermen of any city named in the articles of association, after such notice, exhibition of the map, and hearing, shall agree with the directors as to the proposed route or any route of their railroad in said town or city, such agreement shall be sufficient to fix the same; and said selectmen or mayor and aldermen shall sign and give to the directors a certificate setting forth the route so fixed.

6. Whenever the directors fail to agree with the selectmen of any town or the mayor and aldermen of any city as to the route of their railroad in such town or city, said directors may petition the board of railroad commissioners to fix the route in said town or city, who, after due notice to said selectmen or mayor and aldermen, shall hear the parties and fix the route in such town or city. Such board shall make a certificate setting forth the route as fixed by them; and the same shall be certified by the clerk of said board to the directors. The costs of the petition shall be paid by the directors. All variations from the route first proposed shall be made upon the map.

7. The route of a railroad fixed under the two preceding sections may include such spurs and branches and connecting and terminal tracks in any city or town as may be necessary to enable the corporation to conveniently collect and deliver passengers and freight in such city or town; but no such branch, spur or connecting or terminal track shall be laid longitudinally within the limits of a

public way without the consent of the mayor and aldermen, or the selectmen, and in giving such consent they may impose such conditions as to the location, construction and use thereof as may be agreed upon between themselves and the directors; and the corporations owning or operating any such tracks, so laid longitudinally in a public way, shall, in respect to the same, be liable to the city or town in which the same are laid, for all loss or damage caused thereto by the construction and use of such tracks, and by the negligence or default of their agents or workmen thereon. 1874, c. 372, § 27.

8. A railroad corporation may lay out its road not exceeding five rods wide; and for the purpose of cuttings, embankments, and procuring stone and gravel, may purchase or otherwise take, in the manner hereinafter provided, as much more land as may be necessary for the proper construction and security of the road, or as may be at any time necessary for depot and station purposes; and the corporation shall within one year file with the commissioners of each county through which the road passes, the location of the road as thus laid out, defining the courses, distances and boundaries of such portion of the road as lies within each county. Location and construction. Ibid. § 58. 4 Cush. 71. 9 Met. 553. 2 Gray, 574. 4 Gray, 301. 14 Gray, 93. 109 Mass. 528.

9. A railroad corporation, having taken land for its road, may vary the direction of the road in the place where such land is situated; but it shall not locate any part thereof without the limits of the route fixed agreeably to sections twenty-five and twenty-six of this act [§§ 5 and 6 of this digest], unless with the consent in writing of the mayor and aldermen or selectmen, if it was fixed under section twenty-five, or of the railroad commissioners if it was fixed under section twenty-six. The corporation shall, before the expiration of the time required for completing the road, file with the county commissioners the location of the different parts where such variations are made; and the time for completing the road shall not be extended in consequence of such variations. Direction of road may be varied. Ibid. § 59. 1 Gray, 340. 109 Mass. 528. Location to be filed where variations are made.

10. If a railroad corporation, for the purpose of making or securing its road, or for depot or station purposes, requires land or materials without the limits of the route fixed as aforesaid, and is unable to obtain the same by agreement with the owner, it may apply to the county commissioners, who, after notice to the owner, may prescribe the limits within which the same may be taken in the manner hereinafter provided, without his permission; and the When land is required without limits of route fixed, county commissioners to decide. Ibid. § 60.

1874, c. 372, § 60. corporation shall file a location thereof within one year with the commissioners of each county in which the same is situated, defining the courses, distances and boundaries of the same.

Land so taken
for depot not
exempt from
taxation.
Ibid. § 62.
4 Met. 564.
8 Cush. 237.

11. Land without the limits of the route fixed as aforesaid so taken or purchased for depot or station purposes shall not be exempt from taxation.

TAKING LAND, AND DAMAGES THEREFOR.

Taking land,
and damages
therefor.
Ibid. § 63.

3 Met. 380.
3 Cush. 107.
4 Cush. 201.
10 Cush. 385.
12 Cush. 605.
7 Allen, 313.
4 Gray, 301.
103 Mass. 10.
105 Mass. 303.
107 Mass. 352.
109 Mass. 528.

12. When a railroad corporation is not able to obtain by agreement with the owner, the land or materials necessary for its purposes, as described in the four preceding sections, it may take the same. The corporation shall pay all damages occasioned by laying out and making and maintaining its road, or by taking any land or materials therefor; and such damages shall, upon the application of either party, be estimated by the county commissioners in the manner provided in laying out highways; and when it is intended to take land or materials, application may be made before the actual taking and appropriation thereof.

Applications for
estimate of dam-
ages to be made
within three
years.
Ibid. § 64.
7 Gray, 389.

13. Except as is provided in sections seventy-eight, seventy-nine and eighty [St. 1874, c. 372, — not included in this digest], no application to the commissioners to estimate damages for land or other property taken, shall be sustained unless made within three years from the time of taking the same.

Security may be
required for
payment of
damages and
costs.
Ibid. § 65.

14. Upon application to the commissioners by either party for an estimate of damages, they shall, if requested by the owner, require the corporation to give security to their satisfaction for the payment of all damages and costs which may be awarded by them or a jury for the land or other property taken; and if upon petition of the owner, with notice to the adverse party, the security appears to the commissioners to have become insufficient, they shall require the corporation to give further security to their satisfaction; and all the right or authority of the corporation to enter upon or use the land or other property, except for making surveys, shall be suspended until it gives the security required.

Tender may be
made to owner
of land, etc.
Ibid. § 66.

15. After the commissioners have made their estimate, the corporation may tender to the owner of the land or other property the amount of damages estimated, in full satisfaction thereof, with costs taxed to that period.

16. Either party, if dissatisfied with the estimate of the commissioners, may at any time within one year after it is completed and returned, apply for a jury to assess the damages. If no such application be made, the county commissioners, after the expiration of said term of one year, may issue warrants of distress to compel the payment of the damages, with costs and interest; and if the corporation, for thirty days after such warrant has issued, neglects to satisfy the same, all right and authority to enter upon or use the land or property, except for making surveys, shall be suspended until payment thereof.

Either party may apply for a jury to assess damages.
1874. c. 372, § 67.
21 Pick. 258.
1 Gray, 72.

EMBANKMENTS, FENCES, ETC.

17. At the time of estimating damages to land-owners under section sixty-three [§ 12 of the foregoing] the county commissioners shall in addition thereto order the corporation to construct and maintain such embankments, culverts, walls, fences or other structures as they judge reasonable for the security and benefit of such owners, and prescribe the time and manner of making or repairing the same, which order it shall not be competent for any jury to reverse.

Construction and maintenance of embankments, etc., may be ordered.
Ibid. § 81.

18. If the corporation neglects to comply with such order, the land-owner, or his assigns interested in its execution, may apply to the supreme judicial court, which may grant all processes necessary to enforce the specific performance thereof. Or if it appears that the corporation, for more than forty-eight hours after notice of such neglect, given in writing to the president or superintendent, neglected to commence the work required to be done, or thereafter unreasonably delayed to complete the same, the person so interested may maintain an action of tort against the corporation, in which he may recover double the damages sustained by him by reason of the neglect.

S. J. C. may enforce performance if corporation neglect to comply.
Ibid. § 82.
6 Cush. 420.
1 Gray, 614.

19. When the owner of land through which a railroad, constructed prior to the seventeenth day of April, in the year eighteen hundred and forty-one, passes, has not received all damages assessed to him, or has not agreed to maintain suitable fences upon such road, upon the application of the owner or of the mayor and aldermen or selectmen of the city or town, the county commissioners may

Fences for security of land-owner, and travellers.
Ibid. § 83.
12 Cush. 605.
12 Gray, 55.
14 Allen, 151.
98 Mass. 560.
107 Mass. 411.

1874, c. 372, § 83. require the corporation to make and maintain fences suitable for the benefit and security of the land-owner and of travellers upon the road.

RAILROADS CROSSING HIGHWAYS.

Railroad crossing a highway not to obstruct the same.

Ibid. § 86.

1876, c. 73.

14 Allen, 444.

14 Gray, 379.

20. When a railroad is laid out across a highway or other way, it shall be constructed so as not to obstruct the same; and (unless the county commissioners and railroad commissioners shall authorize a crossing at the same level, as provided in section ninety) [§ 24, *post*] it shall be constructed so as to pass either over or under the way, as prescribed in the next section, and conformably to any decree which may be made by the county commissioners under section eighty-eight [§ 22, *post*].

If crossing over or under the way, sufficient space to be left for accommodation of travel.

1874, c. 372, § 87.

Bridge to be not less than eighteen feet above track.

1875, c. 219.

21. If the railroad is constructed to pass over the way, a sufficient space shall be left under the railroad conveniently to accommodate the travel on the way. If the railroad is constructed to pass under the way, the railroad corporation shall build such bridges, with their abutments and suitable approaches thereto, as will accommodate the travel upon the way: *provided*, that no bridge for any purpose shall hereafter be constructed over any railroad at a height less than eighteen feet above the track of such railroad, except by the consent in writing of the board of railroad commissioners. The supreme judicial court may, by injunction or other suitable process in equity, compel a compliance with the provisions of this section.

Highway may be raised or lowered, under direction of county commissioners.

1874, c. 372, § 88.

9 Cush. 1.

22. A railroad corporation may raise or lower any highway or other way for the purpose of having its road pass over or under the same; but before proceeding to cross, alter or excavate for the purpose of crossing the way, it shall obtain from the county commissioners a decree prescribing what alterations may be made in the way, and the manner and time of making the alterations or structures the commissioners may require at the crossing; and, before entering upon, excavating or altering the way, shall give security, satisfactory to the commissioners, to the city or town in which the crossing is situated, that it will faithfully comply with the requirements of the decree to the acceptance of the commissioners, and indemnify the city or town from all damages and charges by reason of any failure so to do.

23. A railroad corporation may alter the course of a highway or other way for the purpose of facilitating the crossing of the same by its road or permitting its road to pass at the side thereof without crossing, upon obtaining a decree of the county commissioners prescribing the manner and time of such alteration. Before granting the decree the commissioners, after due notice to the city or town in which the way is situated, shall decide that the alteration will not essentially injure the way. The corporation shall pay all damages occasioned to private property by the alteration, as in case of land taken for its road.

Course of highway may be altered.
1874, c. 372, § 89.

24. When a railroad is laid out across a highway or other way, the county commissioners, upon the application of the railroad corporation, or of the mayor and aldermen or selectmen of the city or town in which the crossing is situated, after due notice to all parties interested, and after hearing the parties, may adjudge that public necessity requires the crossing at the same level, and may make a decree to specially authorize and require the corporation so to construct its road, in such manner as shall be prescribed in the decree; and said commissioners may modify the terms of such decree, or revoke the same, at any time before the construction of the railroad at such crossing. By St. 1876, c. 73, the consent in writing of the railroad commissioners is necessary to authorize a crossing at grade.

Crossing at a level.
Ibid. § 90.
1865, c. 73.

25. A railroad corporation whose road is crossed by a highway or other way, on a level therewith, shall at its own expense so guard or protect its rails by plank, timber or otherwise, as to secure a safe and easy passage across its road; and if in the opinion of the county commissioners any subsequent alteration of the highway or other way, or any additional safeguards, are required at the crossing, they may order the corporation to establish the same as provided in section eighty-eight [§ 22 of this digest].

Rails to be protected to secure safe passage across railroad.
1874, c. 372, § 91.

26. A highway or town way may be laid out across a railroad previously constructed when the county commissioners adjudge that the public convenience and necessity require the same, and the railroad commissioners consent thereto in writing; and in such case, after due notice to the railroad corporation, and hearing all parties interested, they may thus lay out a highway across a railroad, or may authorize a city or town, on petition of the mayor and

Highways, etc., may be laid out across railroad.
Ibid. § 92.
1876, c. 73.
1 Allen, 324.
11 Gray, 512.
7 Allen, 523.

1874, c. 372, § 92. aldermen or selectmen thereof, to lay out a way across a railroad, in such manner as not to injure or obstruct the railroad, and otherwise in conformity with the provisions of sections eighty-six and eighty-seven [§§ 20, 21, of this digest]; but not permitting it to cross at a level with the railroad unless public necessity so requires, in which case they may give special authority for such crossing, as provided in section ninety [§ 24 of this digest].

Crossing turn-
pikes and
canals.
Ibid. § 93.

27. The provisions of the seven preceding sections shall apply to crossings of railroads and turnpikes, and the county commissioners shall have the same powers as regards such crossings as are provided in said sections for crossings of railroads with highways or other ways. Before proceeding to make any excavations for the purpose of such crossing, or to raise, lower or alter a turnpike for such purpose, the railroad corporation shall notify in writing the turnpike corporation, which within thirty days shall inform the railroad corporation in writing of the alterations, if any, which it may require to have made therein for such purpose. If the parties do not agree, either may apply to the county commissioners, and their decision shall be final. If the railroad corporation unreasonably neglects to make such alteration as the commissioners order, the turnpike corporation shall have the same remedies as are prescribed for the recovery of damages caused by making a railroad. A railroad corporation may, with the consent of a turnpike or canal corporation, alter the course of a turnpike, canal or feeder to a canal, where the same interferes with the convenient location of its road; or the turnpike corporation may, in pursuance of a vote therefor at a meeting called for the purpose, assign and transfer to the railroad corporation its franchise as to the whole or part of the turnpike; and thereafter all the rights and duties of the turnpike corporation shall cease and be discontinued so far as they relate to the part of the turnpike so assigned, and the railroad corporation may locate its road upon any part of the same ground; but no part of a turnpike shall be thus assigned or used without the consent in writing of the county commissioners, if such part is located in a single county, or of the superior court in one county if it lies in two or more counties. Damages caused by taking the property of any person under this section shall be estimated and paid as in case of land taken under section sixty-three [§ 12 of this digest].

28. If, upon application to the county commissioners by the mayor and aldermen or selectmen of any city or town, it appears that a railroad corporation crosses with its road a highway or other way therein, so as to cause an obstruction thereto, contrary to the provisions of section eighty-six [§ 20 of the foregoing], or of any decree of the county commissioners made under section eighty-eight [§ 22 of the foregoing], or that it refuses or neglects to keep in proper repair, any bridge or other structure required or necessary at such crossing, the commissioners, after due notice to the corporation, may pass a decree prescribing what repairs shall be made by the corporation at the crossing, and the time within which they shall be made; and shall order the corporation to pay the costs of the application. They may further order the corporation to give security, as provided in section eighty-eight [§ 22], for the faithful performance of the requirements of the decree and the indemnity of said city or town, upon any failure in such performance.

Obstructions at crossings.
1874, c. 372, § 94.

Repairs at crossings.

29. Every railroad corporation shall, at its own expense, construct and afterwards maintain and keep in repair all bridges, with their approaches or abutments, which it is authorized or required to construct over or under any turnpike road, canal, highway or other way;¹ and any city or town may recover of the railroad corporation whose road crosses a highway or town way therein, all damages, charges and expenses incurred by such city or town by reason of the neglect or refusal of the corporation to erect or keep in repair all structures required or necessary at such crossing; but if, after the laying out and making of a railroad, the county commissioners have authorized a turnpike, highway, or other way to be laid out across the railroad, all expenses of and incident to constructing and maintaining the turnpike or way at such crossing shall be borne by the turnpike corporation or the county, city, town or other owner of the same; until or unless, in either case, it shall be otherwise determined by an award of a special commission, as provided in the four following sections.

Repairs of bridges, etc.
Ibid. § 95.
7 Cush. 490.
8 Allen, 245.
12 Allen, 254.
97 Mass. 430.

¹ A town is not responsible for a defect or want of repair in a bridge whereby a public highway passes over a railroad, the proprietors of which are bound by law to keep the bridge in repair. 7 Cush. 490.

Alteration of
crossings.
1874, c. 372, § 96.

30. If the mayor and aldermen of a city or the selectmen of a town, wherein a highway or town way which crosses or is crossed by a railroad is situated, or the directors of any railroad corporation, whose road crosses or is crossed by such way, are of the opinion that it is necessary for the security or convenience of the public that any alteration should be made in such crossing, or in the approaches thereto, or in the method of such crossing, or in the location of the railroad, or in the location of the highway or town way, or in any bridge at such crossing, the county commissioners shall, when, after due notice and hearing of all parties interested, they decide that such alteration is necessary, prescribe the manner and limits within which it shall be made, and forthwith certify their decision in the matter to the parties, and also to the board of railroad commissioners; and when the county commissioners decide that no alteration is necessary, the party making the application shall pay the costs thereof.

Land may be
taken and dam-
ages assessed.
Ibid. § 97.

31. If, under the provisions of the preceding section, the county commissioners decide that the location of the railroad or of the highway or town way shall be changed, land, or other property, may be taken therefor according to the provisions of law; and all damages occasioned by such taking shall be assessed according to the provisions of the laws which now are or hereafter may be in force regulating the taking of land by railroad corporations, or the taking of land for highways and town ways, as the case may be.

Award to be
made by a spe-
cial commission.
Ibid. § 98.
1875, c. 231, § 1.

32. The party by whom such decision shall be carried into effect shall be determined by the award of a special commission of three disinterested persons, to be appointed by any justice of the supreme judicial court; and the said special commission shall also determine by what party all charges and expenses occasioned by making such alteration, and all future charges for keeping in repair such crossing and the approaches thereto, as well as all costs of the application to the county commissioners, or of the hearing before said special commission, shall be borne; or said special commission may apportion all such charges, expenses or costs between the railroad corporation and the town, city or county in which said crossing is situated; and the supreme judicial court shall have jurisdiction in equity to compel compliance with all orders, decrees and judgments of said special commission.

33. The original jurisdiction of all questions touching obstructions to turnpikes, highways or town ways, caused by the construction or operation of railroads, shall be vested in the county commissioners within their respective jurisdictions.

Jurisdiction vested in county commissioners. 1874, c. 372, § 102. 4 Cush. 63. 2 Gray, 54.

34. The supreme judicial court shall have jurisdiction in equity, and may compel railroad corporations to raise or lower any turnpike, highway or town way, when the county commissioners have decided in due and legal form that such raising or lowering is necessary for the security of the public; and to comply with the orders, decrees and judgments of county commissioners in all cases touching obstructions to such ways by railroads. And if it is made to appear to the supreme judicial court, or any justice thereof, in term time or vacation, upon the petition of the mayor and aldermen or selectmen of any place, that a corporation has excavated or altered a highway or town way without obtaining the decree and giving the security required by section eighty-eight [§ 22 of this digest], or has neglected for fifteen days to give security as required by section ninety-four [§ 28 of this digest], the court or justice may, by injunction or other suitable process according to the practice of courts of equity, restrain and prohibit the corporation from entering upon, altering, excavating or crossing the way until such decree is obtained or the security given.

S. J. C. to have jurisdiction in equity, and may compel railroads to raise or lower highway, etc. Ibid. § 103. 7 Cush. 503.

SIGNS AND GATES AT CROSSINGS.

35. Every railroad corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained across each turnpike, highway, or town way, where it is crossed by the railroad at the same level; said posts and boards shall be of such height as to be easily seen by travellers, without obstructing the travel; and on each side of the boards the following inscription shall be printed in capital letters of at least the size of nine inches each, — “Railroad crossing — Look out for the engine.” When a gate or a flagman is maintained at such crossing, as provided in section one hundred and twenty-six [§ 37 of this digest], the corporation may substitute in place of such posts and boards, warning boards on each side of the crossing, of such form, size and description as the board of railroad commissioners shall

Signs to be maintained at crossings. Ibid. § 124.

1874, c. 372, § 124.
1875, c. 219.

approve. The supreme judicial court may, by injunction, or other suitable process in equity, compel a compliance with the provisions of this section.

Sign-boards to
be erected when
selectmen or
mayor and al-
dermen request.
1874, c. 372, § 125.
7 Gray, 98.

36. If the mayor and aldermen or selectmen of a city or town, wherein a travelled place is crossed by a railroad at the same level, decide that it is necessary, for the better security of the public, that sign-boards such as are described in the preceding section should be maintained at such travelled place, they may in writing request the corporation owning the railroad to erect and maintain them. If the corporation neglects or refuses so to do, the mayor and aldermen or selectmen may apply to the county commissioners to decide upon the reasonableness of their requests. If the commissioners, after due notice and hearing of the parties, decide that such erection is necessary for the better security of the public, the corporation shall comply with their decision, and pay the costs of the application. If they decide that it is not so necessary, one-half of the costs of the application shall be paid by the city or town, and one-half by the corporation.

Agent may be
required to open
and close gates,
or flagman
stationed at
crossing.
Ibid. § 126.

37. If the mayor and aldermen or selectmen of any city or town in which a turnpike, highway, town way or travelled place is crossed by a railroad at the same level, should be of opinion that it is necessary, for the better security of the public, that gates should be erected across such turnpike, highway, town way or travelled place, and that an agent be stationed to open and close such gates when an engine or train passes, or that bars be erected instead of gates, or that a flagman be stationed at the crossing who shall display a flag whenever an engine or a train passes, such mayor and aldermen or selectmen may in writing request the railroad corporation to erect and maintain gates, and station an agent thereat; or to erect bars; or to station a flagman at the crossing. If the corporation refuses or neglects to comply with the request, the mayor and aldermen or the selectmen may apply to the county commissioners. Upon such application, or at any time upon the petition of any party, after due notice and hearing, the commissioners may make such orders for the erection and maintenance of gates or bars, or the stationing of an agent or flagman, or such alteration of arrangements already existing at the crossing, as said commissioners shall decide the better security of human life

Commissioners
may order gates
to be erected,
etc.

or the convenience of the public travel require, and may further make such order as to costs as justice may require; and the railroad corporation shall comply with all such orders of the county commissioners, whether made before the railroad is constructed and opened for use, or from time to time afterwards. 1874, c. 372, § 126.

38. If an agent stationed at a crossing under the provisions of section one hundred and twenty-six [the previous section] neglects to open or close the gates for the safe passing of an engine on the railroad, or of a traveller on the turnpike, highway, or other way, or if a flagman so stationed neglects to display his flag, the agent or flagman shall for every neglect forfeit a sum not exceeding one hundred dollars; and the corporation shall also be liable for all damages sustained by any person by reason of such neglect of any of its agents. Penalty on agent at crossing for neglect of duty. Ibid. § 127.

39. If a railroad corporation unreasonably neglects or refuses to comply with any order or decision made under section one hundred and twenty-five, or one hundred and twenty-six [§§ 36 and 37 of the foregoing], it shall forfeit for every such refusal or neglect a sum not exceeding one thousand dollars. The supreme judicial court shall have jurisdiction in equity, and may compel railroad corporations to comply with the orders, decrees and judgments of county commissioners in all cases touching the crossing of turnpikes, highways, other ways or travelled places by railroads. Penalty on corporation for neglect to comply with order. Ibid. § 128.

40. No railroad corporation, nor its servants or agents, shall wilfully or negligently obstruct, or unnecessarily or unreasonably use or occupy a highway, town way or street; nor in any case with cars or engines, for more than five minutes at one time; and whenever a highway, town way or street has been thus used or occupied with cars or engines, no railroad corporation shall again use or occupy the same with the cars or engines of a freight train, until a sufficient time, not less than three minutes, has allowed the passage across the railroad of such travellers as were ready and waiting to cross when the former occupation ceased. For any violation of the provisions of this section the corporation shall forfeit the sum of one hundred dollars. Penalty on corporation for obstructing highways, etc. Ibid. § 129.

RAILROAD TRACKS FOR PRIVATE USE.

Railroad tracks
for private use.
1874, c. 372, § 175.

41. Any person or corporation may construct a railroad track for private use in the transportation of freight, subject to the provisions of the following section: *provided*, that nothing herein contained shall be construed to authorize the taking or use of lands or other property without the consent of the owner thereof.

Not to be con-
nected with
tracks of corpo-
ration without
consent.
Ibid. § 176.

42. No such track shall be connected with the tracks of a railroad corporation without the consent of such corporation; and no such track shall be constructed across or upon a highway, town way or travelled place, except with the consent of the mayor and aldermen or selectmen of the city or town, and in a place and manner approved by them. If said mayor and aldermen or selectmen consent, they shall make from time to time such regulations in regard to the motive power to be employed, the rate of speed to be run, and time and manner of using the track over and upon such way or travelled place, as in their judgment the public safety and convenience require, and they may order such changes to be made in the track as are rendered necessary by the alteration or repair of such way. If they allow steam power to be used on such track, the provisions of this act relating to the crossing of ways and travelled places by railroad corporations shall apply to such track and the person or corporation by whom the same was constructed.

RAILROAD POLICE.

Railroad police
officers to be
appointed.
Ibid. § 143.

43. The selectmen of any town, or the mayor and aldermen of any city may, upon the petition of any railroad corporation having a passenger station within the limits of such town or city, appoint as many as they may deem proper of the persons in the employ of said corporation police officers, to act as railroad police for the purposes and with the powers hereinafter set forth. A copy of the record of the appointment of any railroad police officer shall be filed by the clerk of the corporation upon whose petition such order is made, with the clerk of each town or city through or into which such railroad extends and in which it is intended that such police shall act; and the filing of such order shall constitute the persons named therein railroad police within such towns or cities. Such

police officers shall hold their offices during the pleasure of the selectmen or mayor and aldermen by whom they are appointed: *provided*, that when any corporation shall cease to require the services of any of the railroad police appointed upon its petition, it may file a notice to that effect in the several offices in which notice of such appointment was originally filed, and thereupon the power of said officer shall cease. 1874 c. 372, § 143.

44. Every officer of the railroad police shall, when on duty except as a detective, wear in plain view a metallic badge, inscribed with the words "Railroad Police" and the initials or name of the corporation for which he is appointed. To wear badges. Ibid. § 144.

45. Officers of the railroad police may preserve order within and upon the premises and upon the cars of the corporation upon whose petition they are appointed; they may arrest without a written warrant all idle, intoxicated or disorderly persons frequenting such premises or cars and obstructing or annoying by their presence or conduct, or by profane or indecent language or behavior, travellers using the same, and may take the persons so arrested to the nearest police station or other place of lawful detention. May arrest disorderly persons without a warrant. Ibid. § 145.

46. Whenever any passenger upon a railroad train refuses to pay his fare, or behaves in a noisy or disorderly manner, any railroad police officer may arrest him without a written warrant and remove him to the baggage or other suitable car of such train, where such officer may confine him until the arrival of the train at some station where he can be placed in charge of an officer who shall take him to a place of lawful detention. May arrest passenger for refusing to pay fare. Ibid. § 146.

47. The compensation of all railroad police shall be paid by the corporations upon whose petition they are respectively appointed. And such corporations shall be liable to parties aggrieved by any official misconduct of such railroad police to the same extent as for the torts of agents and servants in their employ. Compensation to be paid by corporation. Ibid. § 147.

CHANGE OF RAILROAD TRACKS IN EAST BOSTON.

48. The Eastern Railroad Company, the Boston and Albany Railroad Company, and the Boston, Revere Beach and Lynn Railroad Company are hereby authorized, on the request in writing of the mayor, duly authorized by the board of aldermen, of the Location and tracks of railroads may be changed in East Boston.

1875, c. 214, § 1. city of Boston, to discontinue and remove, in whole or in part, such portion of the location and tracks of said corporations as are situated in that part of Boston known as East Boston, and to relocate the same upon a new line, to the east of the present one, in such manner as may be agreed upon between said corporations and the said mayor and aldermen; and for this purpose they may purchase or take land and other property in the method provided for in chapter three hundred and seventy-two of the acts of the year eighteen hundred and seventy-four; and the said relocated road may be constructed over and across tide-waters lying to the eastward of said East Boston, in such manner as may be approved by the board of harbor commissioners.

Expense of re-
location to be
apportioned
among railroads
and city of
Boston.
Ibid. § 2.

49. Should the Eastern Railroad Company, the Boston and Albany Railroad Company, and the Boston, Revere Beach and Lynn Railroad Company, discontinue and relocate their tracks on the request and in the manner specified in the preceding section, the cost of so doing shall be apportioned among the said Eastern Railroad Company, the Boston and Albany Railroad Company, the Boston, Revere Beach and Lynn Railroad Company and the city of Boston, by a commission which, upon the petition of said corporations, or either of them, shall be appointed, and shall proceed in the manner and with the powers set forth in section ninety-eight of chapter three hundred and seventy-two of the acts of the year eighteen hundred and seventy-four [§ 32 of the foregoing].

Assessment for
betterments.
Ibid. § 3.

50. The amount, or any part thereof, assessed under this act against the city of Boston by said commissioners, may be levied upon the estates benefited by said relocation in the manner provided by law with respect to betterments upon the laying out and discontinuance of highways in said city of Boston: *provided*, that no estate shall be assessed with a betterment exceeding one-half its increased value by reason of the change of location of said railroad companies; and *provided*, that the board of aldermen of the city of Boston shall determine that it is expedient that said amount, or any part thereof, assessed by said commissioners against said city, shall be raised by levying said betterments.

Proviso.

STREET RAILWAYS.

CHARTERS TO BE ACCEPTED.

1. The act incorporating any corporation shall be void unless When charter void.
1871, c. 381, § 12. the same is accepted within six months, and shall be void so far as relates to the right to construct a road within the limits of any city or town, unless the same shall be accepted by the city council of such city, or the selectmen of such town, within one year, and unless some portion of said road is located and built and put in operation within eighteen months from the passage of said act. This section shall not apply to corporations existing prior to the eleventh day of June, in the year eighteen hundred and sixty-four.¹

LOCATION OF ROAD.

2. ²The board of aldermen of any city, or the selectmen of any town, in which any corporation is authorized to construct a street railway, may, upon the petition of such corporation, locate the tracks thereof within their respective jurisdictions, pursuant to the provisions of its charter: *provided*, that before proceeding to locate such tracks, they shall give notice to all parties interested, by publication in such newspapers, or otherwise, as they may determine, at least fourteen days before their meeting, of the time and place at which they will consider such location. After a hearing of all parties interested, they shall pass an order refusing the location, or granting the same, or any portion thereof, under such restrictions as they deem the interests of the public may require, and the location thus granted shall be deemed and taken to be the true location of the tracks of the corporation, if its acceptance thereof in writing is filed with said mayor and aldermen or selectmen within thirty days after receiving notice thereof. Location of tracks, notice, etc.
Ibid. § 14.

3. The board of aldermen of any city and the selectmen of any town may, from time to time, upon petition, authorize and Location of tracks may be extended by

¹ It does not appear that the articles of association adopted by street railway corporations formed under the general law (St. 1874, c. 29) require to be accepted by the city council before steps are taken to locate the road.

² The provisions of this section apply also to corporations formed under the general law. See St. 1874, c. 29, § 6.

permission of
aldermen and
selectmen.
1874, c. 29, § 11.

empower any street railway corporation, its lessees and assigns, whose charter has been duly accepted, and whose tracks have been located and constructed, to extend the location of its tracks within the territorial limits of such city or town, whenever it can be done without entering upon or using the tracks of any other street railway corporation, under such restrictions as they deem the interests of the public may require. And the location thus authorized shall be deemed and taken to be the true location of the tracks of the corporation, if its acceptance thereof, in writing, is filed in the office of the clerk of such city or town within thirty days after receiving notice thereof. Before acting upon the petition, notice of the time and place of hearing shall be given to all parties interested, by publication, at least fourteen days prior thereto, in such newspapers or otherwise as the board of aldermen or selectmen may determine.

Tracks of other
roads may be
used under au-
thority from
aldermen and
selectmen.
Ibid. § 12.

4. Whenever the board of aldermen of any city, or the selectmen of any town, after due notice and hearing, shall decide that public necessity and convenience so require, they may authorize and empower any street railway corporation, its lessees and assigns, whose tracks have been duly located in such city or town, and who own and operate not less than two consecutive miles of track, to enter upon and use with its horses and cars, within defined limits, the tracks of any other street railway corporation therein, which it may meet or cross, subject to the provisions of law relating to such entry and use.

Use of tracks
and number of
cars to be run to
be regulated by
aldermen and
selectmen.
Ibid. § 13.

5. The board of aldermen or selectmen may, from time to time, make such regulations as to the manner and extent of use of tracks and the number and routes of cars of any and all companies running over the same within their city or town, as the interests of public travel shall require.

Where track
sought to be
used is in two
or more towns
and agreement
is not made, the
matter to be
determined by
commissioners.
Ibid. § 14.

6. Where the track, operated by a corporation, seeking to enter upon and use, or sought to be entered upon and used by another, under the provisions of section twelve of this act [§ 4 of this digest], is in two or more cities or towns, and the selectmen or boards of aldermen of such cities or towns are unable to agree as to the public necessity for such entrance and use, the board of railroad commissioners shall, upon the petition of either corporation, and after due hearing, decide whether such entry and use is required

on grounds of public convenience and necessity, and determine the extent of use of tracks, and the number and routes of cars; and the decision of said board shall be final. 1874, c. 29, § 14.

7. The location and position of the tracks of any corporation may be altered upon application of any party interested, by the same authority, and in the same manner, as is provided in section two for the original location. The expense of such alteration, which shall be made by the corporation within such time after such alteration shall have been ordered, as the board of aldermen or selectmen may determine, shall be borne by such party as the board of aldermen or selectmen may determine. Location may be altered. 1871, c. 331, § 15. Expense.

8. The board of aldermen of any city, or the selectmen of any town, may, at any time after the expiration of one year from the times of the opening for use of any street railway in such city or town, if in their judgment the interests of the public require, after notice published as provided in the preceding sections, and a hearing, order that the location of any of the tracks in any street or highway shall be revoked, and the railway corporation shall thereupon remove the same in conformity with such order, and put the street in as good condition as it was in immediately before being occupied by said tracks. Location may be revoked, and corporation ordered to put street in as good condition as it was before tracks were laid. Ibid. § 16.

9. If any corporation neglects to execute any order and make the repairs as prescribed in the preceding section, after thirty days' notice thereof, then the board of aldermen or selectmen may cause the same to be executed and made at the expense of the corporation, to be recovered in an action of tort. Penalty for neglect to execute order. Ibid. § 17.

REGULATIONS FOR OPERATING ROAD, STREETS, ETC.

10. The board of aldermen of any city, or the selectmen of any town, in which a street railway is operated, may, from time to time, establish by an order such rules and regulations as to the rate of speed, mode and use of the tracks, and removal of snow and ice from the same, as in their judgment the interest and convenience of the public may require. Rules as to rate of speed, etc. may be made by board or selectmen. Ibid. § 13. 11 Allen, 287.

11. If any corporation, its servants or agents, wilfully or negligently violates any rule or regulation established in the manner provided in the preceding section, such corporation shall be liable to a penalty of not more than five hundred dollars for each offence. Penalty for violation of rules. Ibid. § 19.

Streets may be taken up, altered, etc., by cities and towns without liability for damages.
Ibid. § 20.

Portion of streets to be kept in repair.
Ibid. § 21.

12. Cities and towns may take up any of the streets or highways traversed by street railways, for any purpose for which they are now authorized to take up the same, or may alter or discontinue the same, as now authorized by law, without being liable in damages therefor to any railway corporation or the owners of its stock.

13. Every corporation, its lessees or assigns, shall keep in repair such portions of any paved streets, roads and bridges as are occupied by its tracks; and when such tracks occupy streets or roads that are not paved, it shall, in addition to the portion occupied by its tracks, keep in repair eighteen inches on each side thereof, to the satisfaction of the superintendent of streets, the street commissioner or the surveyors of highways, and shall be liable for any loss or injury that any person may sustain by reason of any carelessness, neglect or misconduct of its agents and servants, in the construction, management and use of its tracks.¹

Corporation liable in case recovery is had against city, etc., for defect in highway occupied by its tracks, caused, etc., by it.
Ibid. § 22.

14. In case any recovery is had against any city or town, steam railroad, turnpike or bridge corporation respectively, by reason of any defect or want of repair caused or permitted by a corporation of that part of any street, highway or bridge occupied by its tracks, or by reason of any defect in any part of any street, highway or bridge occupied by its tracks, caused by a corporation, its lessees or assigns or their agents or employees, said corporation, its lessees or assigns, shall be liable to said city, town or corporation respectively, for any sums recovered against either of them, together with all costs and reasonable expenditures incurred in the defence of any suit or suits in which recovery is had by reason of such defect or want of repair: *provided*, the corporation, its lessees or assigns had reasonable notice of such suit or suits, and an opportunity to assume the defence thereof; and *provided, further*, that such defect or want of repair was not caused by said city or town, its agents or servants, exercising the powers reserved to cities and towns in section twenty-one of this act [§ 13 of this digest], or by said other corporations, their agents or servants.

Proviso.

Suitable guards to be maintained upon

15. Every corporation, its lessee or assigns shall erect and maintain upon every bridge or draw of a bridge over which its

¹ The provisions of this section do not have the effect to relieve the city or town, in which tracks are located, from the obligation to keep such streets safe and convenient for public travel. 104 Mass. 18, 23.

track is located and used, suitable guards or railings sufficient to prevent the cars of said corporation from running off said bridge or draw; such guards or railings to be erected and maintained to the satisfaction of the board of aldermen of the city, or the selectmen of the town, in which such draw or bridge or any portion thereof may be situated.

bridges, etc., where track is located.
1871, c. 381, § 23.

16. If any corporation, its lessees or assigns, for sixty days neglects to comply with any order of a board of aldermen of a city, or the selectmen of a town, duly served upon it under the provisions of the preceding section, it shall for each month during which neglect shall continue, in excess of such sixty days, forfeit the sum of two hundred dollars, to be recovered to the use of said city or town.

Penalty for neglect.
Ibid. § 24.

17. If a corporation voluntarily discontinues the use of any part of its tracks for a period of six months, the streets or highways occupied by the same shall, upon the order of the board of aldermen of the city, or the selectmen of the town, forthwith, at the expense of said company, be cleared of said tracks, and put in as good condition for the public travel as they were in immediately before being so occupied.

Board of aldermen or selectmen may order tracks to be taken up, if use is voluntarily discontinued.
Ibid. § 25.

18. The board of aldermen of any city, or the selectmen of any town, may order any corporation to discontinue, temporarily, the use of any tracks within the limits of such city or town, whenever they adjudge that the safety or convenience of the inhabitants require such discontinuance.

May order temporary discontinuance when safety requires.
Ibid. § 26.

19. All corporations shall construct and maintain their tracks of a uniform gauge of four feet eight and one-half inches.

Gauge to be four feet eight and one-half inches.
Ibid. § 27.

OBSTRUCTION OF STREETS.

20. The board of aldermen of any city, or the selectmen of any town, may establish such regulations for giving notice or warning of the approach of street cars by the driver or conductor, as shall in their opinion best secure the unobstructed use of the tracks and the free passage of the cars.

Rules may be established for giving notice by driver, etc., of approach of cars.
Ibid. § 28.

21. Whoever wilfully and maliciously obstructs any corporation, its lessees or assigns, in the legal use of any railway tracks, or delays the passing of the cars or railway carriages thereon,

Penalty for wilful obstruction of tracks.
Ibid. § 29.
7 Allen, 573.

1871, c. 381, § 29. such person, and all who shall be aiding and abetting therein, shall be punished by a fine not exceeding five hundred dollars, or may be imprisoned in the common jail for a period not exceeding three months.

Penalty for wilful obstruction of streets by corporation.
Ibid. § 30.

22. If any corporation, its agents or servants, wilfully or negligently obstruct any street or highway, or hinders the passing of carriages over the same, or wilfully detains the cars of any other company having the lawful right to pass thereon, such corporation shall be punished by a fine not exceeding five hundred dollars; and the agent or servant so offending shall be punished by a fine not exceeding ten dollars for each offence, or by imprisonment in the common jail for a period not exceeding three months.

FARES AND ACCOMMODATIONS.

Accommodations for passengers.
Ibid. § 33.

23. Every corporation shall furnish reasonable accommodations for the conveyance of passengers, and for every wilful neglect to provide the same shall be punished by a fine of not less than five nor more than twenty dollars for each offence, and the directors thereof may establish the rates of fare on all passengers and property conveyed or transported in its cars, subject, however, to the limitations named in its charter, or hereinafter set forth.

Rates of fare.
Ibid. § 34.

24. The board of aldermen of any city, the selectmen of any town, or fifty legal voters of any city or town in which any street railway is located, may apply to the board of railroad commissioners, who shall, after due notice and hearing of the parties interested, revise and regulate the fares as determined by the corporations; but such fare shall not, without the consent of the corporation, be so reduced as to yield, with all other profits derived from operating its road, an income of less than ten per centum upon the actual cost of the construction of its road and the purchase of property for its necessary use, to be determined by said commissioners. The report of the commissioners shall be final and conclusive for at least one year. The expense of said application and hearing shall be borne by such party as the said board may determine.

Old rates not to be increased except.
Ibid. § 35.

25. Nothing contained in the two preceding sections shall be held to authorize any corporation or said commissioners to raise

the rate of fare, or the price of tickets, above what has been heretofore established as such rate or price for any locality, by agreement made as a condition of location or otherwise between a corporation or its directors, and the mayor and aldermen of any city or the selectmen of any town, except by a mutual arrangement with the mayor and aldermen or selectmen with whom such agreement was made. 1871, c. 381, § 35.

26. Any passenger riding from any point in the city of Boston to any other point in said city, in a car run therein by any corporation, shall, upon paying a sum in addition to the established fare for such passage, being in the whole not more than eight cents, receive a check which shall entitle him to a passage, on the same day only, in any car run in said city by any other corporation, between any two points therein: *provided*, that no corporation shall take any sum beyond eight cents for both of the passages aforesaid, including the check, but not including the toll upon any bridge or ferry. Any passenger riding in the car of any corporation from any point in the city of Boston to any other point in said city, or from any point without said city to any point therein, the established fare between such points being not more than six cents, shall, upon paying a sum in addition to the established fare, being in the whole not more than nine cents, receive a check which shall entitle him to a passage, on the same day only, in any car run by any other corporation, between any two points in said city, or from any point therein to any point without said city, the established fare between such points being not more than six cents: *provided, however*, that a corporation whose cars cross a ferry or toll-bridge within the limits aforesaid may collect of passengers crossing such ferry or toll-bridge upon commutation checks one cent additional for a ferry or bridge toll; and no corporation or commissioner of a toll-bridge or ferry shall exact¹ of a corporation, whose cars cross a ferry or toll-bridge less than one mile in length, any other toll than one cent for each passenger carried across in its cars. The corporations issuing such checks shall redeem the same once a week, paying therefor to the corporations presenting them one-half of the amount received as fare of the passengers to whom the checks were sold. Any per-

Commutation
checks.
Ibid. § 36.

¹ As to constitutionality of this provision, see 109 Mass. 506.

1871, c. 381, § 36. son transferring such check, or any check that he may receive in accordance with the provisions of this section, with or without consideration, shall forfeit a sum not exceeding twenty-five dollars, to be recovered by complaint to the use of the corporation. Any corporation violating any of the provisions of this section shall be punished by a fine of not less than five nor more than twenty-five dollars for each offence.

MOTIVE POWER.

Motive power. 27. Corporations may use such motive power on their respective tracks or roads as the board of aldermen of cities, or the selectmen of towns, through which they are located, may from time to time permit.
Ibid. § 44.

Damage by locomotive fires. 28. Every corporation shall be responsible in damages to any person whose buildings or other property is injured by fire communicated by its locomotive engines, and shall have an insurable interest in the property, upon its route, for which it may be so held responsible, and may procure insurance thereon in its own behalf.
Ibid. § 45.

EQUITY POWERS OF SUPREME COURT.

S. J. C. to enforce rules. 29. In addition to the penalties herein provided, the supreme judicial court shall have full equity powers to compel the observance of all orders, rules and regulations made in accordance with this act by the board of aldermen of any city, or the selectmen of any town, or by the board of railroad commissioners.
Ibid. § 57.

RULES AND REGULATIONS.¹

In the exercise of the rightful power reserved to the board of aldermen in the several and respective charters of the horse railroads running through the streets of the city of Boston, it is ordered as follows:—

¹ Rules and regulations passed by the board of aldermen, June 27, 1857, January, 18, 1858, December 30, 1862, and March 21, 1864.

SECTION 1. The following rules shall be observed by the officers, agents, and servants of the aforesaid corporations, in the mode of using the rails of their respective roads in the streets of Boston; and the same rules shall be applied to all other railroads which may hereafter be located in the streets of Boston.

Rules to be observed,
June 27, 1857.

SECT. 2. No car shall be drawn at a greater speed, in the city proper, in any street north of Dover street and the Federal-street bridge, than five miles an hour, nor in any other street in the city, at a greater speed than seven miles an hour.

Speed at which cars may be drawn.
Ibid.

SECT. 3. While the cars are turning the corners, from one street to another, the horses shall not be driven faster than a walk.¹

When turning corners.
Ibid.

SECT. 4. Cars driven in the same direction shall not approach each other within a distance of thirty feet, except in case of accident, when it may be necessary to connect two cars together, and, also, except at stations.

When driven in same direction with others.
March 21, 1864.
Dec. 7, 1874.

SECT. 5. Cars running in different directions shall not be allowed to stop abreast of each other, except at stations.

When driven in opposite directions.
June 27, 1857.

SECT. 6. No car shall be allowed to stop on a cross-walk, nor in front of an intersecting street, except to avoid collisions, or to prevent danger to persons in the street.¹

Not to stop on crossings, etc.
Ibid.

¹ For rules governing street cars and other vehicles at corners of streets and on cross-walks, see rules and regulations of the board of aldermen relating to "carriages," pp. 175-176.

Stopping at intersection of streets.
June 27, 1857.

SECT. 7. When the conductor of any car is required to stop at the intersection of two streets, to receive or land passengers, the car shall be stopped so as to leave the rear platform slightly over the farther crossing.

Conductors, etc., shall keep watch for teams, etc.
Ibid.

SECT. 8. The conductors and drivers of each car shall keep a vigilant watch for all teams, carriages, persons on foot, and especially children, either on the track or moving in the direction of the track; and on the first appearance of danger to such teams, carriages, persons, or children, or other obstruction, the car shall be stopped in the shortest time and space possible.

Ladies, etc., not to enter or leave car when in motion.
Ibid.

SECT. 9. The conductors shall not allow ladies or children to enter or leave the cars while in motion. Other passengers may be allowed to enter the cars and depart therefrom, while the cars are at a full stop or nearly stopped.

Conductors to announce names of streets, etc.
Ibid.

SECT. 10. Conductors shall announce to the passengers the names of the squares and principal streets as the car reaches them.

Snow-ploughs prohibited when sleighing is good.
Jan. 18, 1858.

SECT. 11. Whenever there shall occur a fall of snow of sufficient depth to allow vehicles to pass over the same on runners, no snow-plough shall be allowed to pass over the several tracks of the street or horse railroad corporations, within the limits of the city of Boston, nor shall the respective corporations cause or allow snow to be removed from their several tracks without consent being first obtained of the superintendent.

Snow not to be removed, except, etc.
Ibid.

ent of streets, with approbation of the committee on Jan. 18, 1858.
 paving.¹ The consent for the removal of the snow for
 the opening of the tracks being refused, the several
 corporations are authorized to use a sufficient number
 of sleighs to convey passengers requiring a transit
 over their respective roads, day by day, until the cars
 can be used on the tracks.

SECT. 12. The several corporations shall not Salt, etc., not
to be put on
rails.
Ibid.
 sprinkle salt or any article of a decomposing nature
 on their tracks or rails, or cause or allow the same to
 be done by any of their agents, for the purpose of
 melting the snow; or wash, or cause to be washed by
 any of their agents, the said tracks and rails with
 brine or pickle, for a like purpose, unless a permit is
 granted by the superintendent of streets allowing the
 same to be done, and said permit shall only be granted
 when the use of said articles will not be detrimental
 to vehicles on runners crossing the tracks and rails.

SECT. 13. No car upon any main railroad track in Cars on Tre-
mont street at
certain hours
not to stop
more than one
minute, etc.
Dec. 29, 1862.
Not to stop on
any main track,
except, etc.
 Tremont street shall be allowed, between the hours of
 six o'clock in the forenoon and eight o'clock in the
 afternoon, to stop near any office or station more than
 one minute, unless detained by obstacles on the track
 or to avoid collision. And no car upon any main track

¹ In the exercise of the power given to the board of aldermen of a city, to
 make regulations as to the removal of snow and ice from the tracks of street
 railway companies, they may prohibit the removal of such snow and ice at
 any and all times, or they may require and permit such removal to be made
 only when it is allowed, and in a manner to be designated by the superin-
 tendent of streets or other officers having charge of the condition and repair
 of streets. 11 Allen, 287.

Jan. 18, 1858.

or any street railroad within the city proper shall, between said hours, be allowed to stop, except while passengers are actually leaving or entering the same, or while detained by obstacles upon the track, or to avoid collision.

Rules and regulations to be placed in each car.
June 27, 1857.

SECT. 14. The several corporations shall place, and keep placed, a printed copy of all the rules and regulations of the board of aldermen, in a conspicuous position, in each car run upon their respective roads.¹

RECORDS.

STATUTES.

Linen paper to be used for records.
G. S. c. 29, § 1.

1. All matters of public record in any office shall be entered or recorded on paper made wholly of linen, of a firm texture, well-sized and well-finished; and the clerks and registers of said offices shall give a preference to linen paper of American or domestic manufacture, if such paper is marked in water line with the word "linen," and also with the name of the manufacturer.

City governments, etc., to have records bound, and papers filed.
Ibid. § 2.

2. The county commissioners, city governments and selectmen of the respective counties, cities and towns, shall have all books of public record or registry belonging thereto substantially bound, and other papers and documents within their respective departments duly filed and arranged conveniently for examination and reference, and shall also cause such of said public records as are left incomplete by any clerk or register to be made up and completed by his successor from the files and usual memoranda as far as practicable, and certified and preserved in the same manner and with the same effect as is provided for other cases.

County commissioners, etc., to provide fire-proof rooms, etc., for records, etc.

3. The commissioners shall provide and maintain fire-proof rooms, with suitable alcoves, cases, and boxes, for the safe-keeping of all records, files, papers, and documents, belonging to the several registries of deeds; and a suitable place for the safe-keeping

¹ For locations of the several street railways in Boston, see records of the board of aldermen.

and preservation of the other public records, and of valuable documents belonging to the county ; and for their particular security and preservation ; and such records and documents shall be securely kept in the places so provided. G. S. c. 29, § 3.

4. City governments and selectmen shall provide, at the expense of their respective cities and towns, fire-proof safes of ample size for the preservation of books of record or registry, and other important documents or papers belonging thereto ; and the clerk of each city and town shall keep all such books, papers, and documents, in the safe so provided, at all times except when they are wanted for use. City governments and selectmen to provide fire-proof safe, etc. Ibid. § 4. 1857, c. 97, § 1.

5. A city or town may cause to be carefully transcribed such of its records as relate to grants of lands, or the grants or divisions and allotments of land made by the original proprietors of the township, or to any easements, private rights, or ways, or any records of births and marriages kept by such city or town, or by any parish within the same. Town may cause its records of grants, etc., to be transcribed. G. S. c. 29, § 5. 1857, c. 84, § 1.

6. A city or town whose territory in whole or in part has been set off from any other city or town may cause to be carefully transcribed such records named in the preceding section as relate to lands, easements, rights, or ways, situated in the territory so set off. Or those of town from which set off. G. S. c. 29, § 6.

7. When the records of a county, city, or town are becoming worn, mutilated, or illegible, the county commissioners, city government, or selectmen, shall have fair legible copies, seasonably made ; and when the interests of any county, city, or town, require, the county commissioners, mayor and aldermen, selectmen, or overseers of the poor, may have copies of any records or parts of records, or of any papers or documents, in the legal custody of any other county, city, or town, so made at the expense of their respective counties, cities, or towns ; which copies shall be certified by the register or clerk of the office where they are taken to be true copies of the originals, and they shall be preserved in like manner as the original records, papers and documents, of the place for which they are made. Records becoming illegible, etc., may be transcribed ; and records of other places. Ibid. § 7. See 1874, c. 162.

8. A transcript made in pursuance of the provisions of the preceding sections, and compared and certified under oath by the clerk or register having the custody of the original to be a true copy, shall have the same force and effect when deposited among the records of the place for which it is made as if the same were an original record, or an original paper, or document, deposited there. Transcripts compared and certified, etc., to have force of originals. G. S. c. 29, § 8. See § 2.

Records not to
be removed, ex-
cept, etc.
G. S. c. 29, § 9.

9. Registers of deeds, registers of courts, and the registers and clerks of courts, cities, and towns, shall keep all records and documents belonging to their offices in their sole custody, and shall in no case, except upon summons in due form of law, or when the temporary removal of records and documents in their custody is necessary or convenient for the transaction of the business of the courts or the performance of the duties of their respective offices, cause or permit any record or document to be removed or taken away.

May be in-
spected and
copied. Clerks,
etc., to certify.
Ibid. § 10.

10. Under the direction of the officers having the custody of the county, city, and town records and files, the same shall be open for public inspection and examination, and any person may take copies thereof. And the several clerks and registers shall, on payment of a reasonable fee therefor, compare and certify, in the manner herein mentioned, all transcripts properly and correctly made for any county, city, or town, in pursuance of the provisions of this chapter.

Town or city
clerk to have
custody of rec-
ords when, etc.
Ibid. § 11.
See § 13.

11. The legal custody of the books of record and other documents of the ancient proprietors of townships or of common lands, when they have ceased to be a body corporate, shall, unless they have made other legal disposition thereof, be vested in the clerk of the city or town in which such lands or the larger portion of them are situated; who, if such records and documents are in the possession of any other person, shall demand the same, and may make and certify copies thereof in the same manner as the clerk of the proprietors might have done.

Penalties.
G. S. c. 29, § 13.

12. Every county, city, and town, for each month it neglects or refuses to perform any duty required by this chapter, shall forfeit twenty dollars; a register or clerk who neglects or refuses to perform any duty required of him shall forfeit for each offence ten dollars; whoever takes and carries away any book of record, paper or written document, belonging to the records or files of any county, city, or town, except as is provided in section nine, or defaces, alters, or mutilates, by mark, erasure, cutting, or otherwise, any such record, paper, or written document, shall forfeit a sum not exceeding fifty dollars; and whoever, after demand made by the clerk of the city or town entitled by law to have possession of the books of record and other documents mentioned in section eleven, wrongfully detains the same, shall forfeit fifty dollars.

13. The county commissioners of the several counties are hereby authorized and required to have made, under their direction, copies of such records or books of records of proprietors, of town proprietaries, or of any city, town, or county within or without the commonwealth, as relate to titles of land in their respective counties, and as in their judgment ought to be preserved and perpetuated; such copies to be deposited in the registry of deeds for the county or division of a county to which such records relate, to be there kept by the respective registers of deeds as other books of records are kept by them.

County commissioners may cause copies to be made of books of record, etc.
1874, c. 162.
G. S. c. 17,
§§ 16-83.
1867, c. 265, § 1.
Copies to be deposited where.

14. The persons employed by said commissioners to make such copies shall be sworn to the faithful discharge of their duty, and shall certify the copies made by them as aforesaid. The compensation of such persons shall be fixed by said commissioners, and shall be paid out of the county treasury.

Expense thereof to be paid by county.
1867, c. 265, § 2.

15. Copies from the copies made, certified and deposited as before provided, duly certified by the register of deeds, shall be admitted in evidence in any court, in the same manner as copies from the registry of deeds are now admitted.

Copies of such copies shall be evidence.
Ibid. § 3.

ORDINANCE.¹

SECTION 1. Under the direction of the several boards having charge of the public institutions at South Boston and Deer Island, the city hospital, the public library, the water department, fire department, the pauper department, Mount Hope cemetery, and the ferry department, the records and files of said institutions and departments shall be open for public inspection and examination, and any persons may take copies thereof; provided, however, that the medical records of the city hospital shall not be included among the records open to public inspection, unless by special vote of the city council.

Records to be open to the public.
May 24, 1872.
Nov. 5, 1873.

¹ An ordinance in relation to the records of public institutions and departments, passed May 24, 1872. An ordinance in addition to an ordinance in relation to the records of public institutions and departments, passed November 5, 1873.

RECORD COMMISSIONERS.

ORDINANCE.¹

Appointment
of two com-
missioners.
July 6, 1875.

SECTION 1. In the month of July, in the year 1875, or as soon thereafter as may be, and every fifth year thereafter, the mayor shall appoint, subject to the approval and confirmation of the city council, two suitable persons, to be termed record commissioners, who shall hold office for the term of five years from the first Monday in May in the year of their appointment, and until their successors shall be appointed and qualified. They shall have and exercise the powers and duties hereinafter designated, shall serve without compensation and may be removed at any time by the mayor, or by concurrent vote of two-thirds of both branches of the City Council, and all vacancies occurring from any cause shall be filled for the unexpired term in the same manner as the original appointments are herein directed to be made.

Powers and
duties.
Ibid.

SECT. 2. It shall be the duty of said commissioners to complete, so far as practicable, the record of births, marriages and deaths in the town and city of Boston prior to A.D. 1849, and to receive and collect all documents obtainable therefor. All documents and records so collected shall become at once the property of the city of Boston and be deposited in the office of, and be in the charge of, the city registrar, or such other officer as the city council may direct.

¹ An ordinance in regard to record commissioners, passed July 6, 1875.

SECT. 3. The said commissioners shall have no power to enter into any contract or agreement in behalf of the city with any person, whereby the expenditure of money, or any other obligation, shall be incurred, unless expressly authorized so to do by the city council: *provided, however*, that unless otherwise ordered, they shall have the charge and control of the expenditure of all moneys expressly appropriated for copying any documents or records supplementary to the town or city records.

Not to make
expenditure of
money.
July 6, 1875.

REGISTRY AND RETURN OF BIRTHS, MARRIAGES AND DEATHS.

STATUTES.

1. The clerk of each city and town shall receive or obtain, and record and index, the following facts concerning the births, marriages, and deaths therein, separately numbering and recording the same in the order in which he receives them, designating in separate columns:—

City and town
clerks to record
births, mar-
riages and
deaths.
G. S. c. 21, § 1.
See § 11.

In the record of births, the date of the birth, the place of birth, the name of the child (if it have any), the sex and color of the child, the names and the places of birth of the parents, the occupation of the father, the residence of the parents, and the date of the record.

Births.

In the record of marriages, the date of the marriage, the place of marriage, the name, residence, and official station of the person by whom married, the names and the places of birth of the parties, the residence of each, the age and color of each, the condition of each (whether single or widowed), the occupation, the names of the parents, and the date of the record.

Marriages.

Deaths.

G. S. c. 21, § 1.

In the record of deaths, the date of the death, the name of the deceased, the sex, the color, the condition (whether single, widowed, or married), the age, the residence, the occupation, the place of death, the place of birth, the names and places of birth of the parents, the disease or cause of death, the place of burial, and the date of the record.

Parents and others to give notice of births and deaths.

Ibid. § 2.

See § 11.

2. Parents shall give notice to the clerk of their city or town of the births and deaths of their children; every householder shall give like notice of every birth and death happening in his house; the eldest person next of kin shall give such notice of the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital or almshouse, except the state almshouses at Tewksbury, Bridgewater, and Monson, and the master or other commanding officer of any ship, shall give like notice of every birth and death happening among the persons under his charge. Whoever neglects to give such notice for the space of six months after a birth or death shall forfeit a sum not exceeding five dollars.

Physician to certify, etc.

Penalty.

Ibid. § 3.

3. Any physician having attended a person during his last illness shall, when requested within fifteen days after the decease of such person, forthwith furnish for registration a certificate of the duration of the last sickness, the disease of which the person died and the date of his decease, as nearly as he can state the same. If any physician refuses or neglects to make such certificate, he shall forfeit and pay the sum of ten dollars to the use of the town in which he resides.

Sextons and others to make returns to city and town clerks.

Penalties.

Ibid. § 4.

4. Every sexton, undertaker, or other person having charge of a burial-ground, or the superintendent of burials having charge of the obsequies or funeral rites preliminary to the interment of a human body, shall forthwith obtain and return to the clerk of the city or town in which the deceased resided, or the death occurred, the facts required by this chapter, to be recorded by said officer concerning the deceased, and the person making such return shall receive from his city or town the fee of ten cents therefor. The clerk, upon recording such facts, shall forthwith give to the person making such return, a certificate that such return has been made, which certificate such person shall deliver to the person having charge of the interment, if other than himself, before the burial when practicable, otherwise within seven days thereafter. When

Clerk to give certificate.

See § 11.

a burial takes place, and no certificate is delivered as aforesaid, G. S. c. 21, § 4. the sexton, undertaker, or other person having charge of the interment, shall forthwith give notice thereof to the clerk, under penalty of twenty dollars.

5. The clerk of each city and town shall annually, on or before the first day of March, transmit to the secretary of the commonwealth, certified copies of the records of the births, marriages, and deaths which have occurred therein during the year ending on the last day of the preceding December. To transmit copies to secretary of state. Ibid. § 5. 1875, c. 21. See § 11.

6. The record of the town clerk relative to any birth, marriage, or death, shall be *prima facie* evidence, in legal proceedings, of the facts recorded. The certificate signed by the town clerk for the time being shall be admissible as evidence of any such record. Record of clerk, etc., to be evidence. Ibid. § 6. 10 Allen, 161.

7. The clerk shall receive from his city or town for obtaining, recording, indexing, and returning to the secretary of the commonwealth, the facts in relation to a birth, fifty cents; a marriage, fifteen cents; for each death returned to him by the persons specified in sections two, three and four, of chapter twenty-one of the General Statutes, twenty cents for each of the first twenty entries, and ten cents for each subsequent entry; for each death not so returned, but by him obtained and recorded, thirty-five cents; but a city or town containing more than ten thousand inhabitants may limit the aggregate compensation allowed to their clerk. He shall forfeit a sum not less than twenty nor more than one hundred dollars for each refusal or neglect to perform any duty required of him by this chapter. Fees of, etc. Penalty. Ibid. § 7. 1866, c. 138. 1873, c. 145. 1873, c. 341. See § 11.

8. The superintendents of the state almshouses at, Tewksbury, Bridgewater, and Monson shall obtain, record, and make return of the facts in relation to the births and deaths which occur in their respective institutions, in like manner as is required of town clerks. The clerks of said towns shall, in relation to the births and deaths of persons in said almshouses, be exempt from the duties otherwise required of them by this chapter. Superintendents of State almshouses to record, return, etc., facts in relation to births, etc. G. S. c. 21, § 8.

9. The secretary shall, at the expense of the commonwealth, prepare and furnish to the clerks of the several cities and towns, and to the superintendents of the state almshouses, blank books of suitable quality and size to be used as books of record under this chapter, blank books for indexes thereto, and blank forms for Secretary to furnish blank books and forms for returns. Ibid. § 9.

G. S. c. 21, § 9.

returns, on paper of uniform size; and shall accompany the same with such instructions and explanations as may be necessary and useful. City and town clerks shall make such distribution of blank forms of returns furnished by the secretary as he shall direct.

To cause re-
turns to be
bound, etc.
To report to
legislature, etc.
Ibid. § 10.

10. The secretary shall cause the returns received by him for each year to be bound together in one or more volumes, with indexes thereto. He shall prepare from the returns such tabular results as will render them of practical utility, make report thereof annually to the legislature, and do all other acts necessary to carry into effect the provisions of this chapter,

Registrars may
be chosen in
certain cases.
Ibid. § 11.

11. Any city or town containing more than ten thousand inhabitants may choose a person other than the clerk to be registrar, who shall be sworn, and to whom all the provisions of this chapter concerning clerks shall apply. The returns and notices required to be made and given to clerks shall be made and given to such registrar under like penalties.

Secretary to
prosecute for
penalty.
Ibid. § 12.

12. The secretary of this commonwealth shall prosecute, by an action of tort, in the name of the commonwealth, for the recovery of any penalty or forfeiture imposed in the preceding sections.

Towns may
make additional
rules, etc.
Ibid. § 13.

13. Any city or town may make rules and regulations to enforce the provisions of this chapter, or to secure a more perfect registration of births, marriages, and deaths, therein.

Penalty for
sending to pub-
lishers of news-
papers fraudu-
lent notices of
births, mar-
riages, and
deaths.
1860, c. 195.

14. Any person who shall wilfully send to the publishers of any newspaper, for the purpose of publication, a fraudulent notice of the birth of a child, or of the marriage of any parties, or of the death of any person, shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars.

ORDINANCE.¹

City registrar to
be elected.
Sept. 3, 1850.

SECTION 1. There shall be elected, annually, on the first Monday of February, or within sixty days thereafter, and whenever a vacancy occurs, by concurrent vote of the two branches of the city council, a

¹ An ordinance providing for the appointment of a city registrar, passed September 9, 1850.

city registrar, who shall hold his office for one year from the first Monday of April in the year of his election, and until a successor is elected, or he is removed. He may be removed at the pleasure of the city council, and a vacancy may be filled at any time for the unexpired term.

Tenure of office; vacancy.
Sept. 9, 1850.

SECT. 2. The city registrar shall perform the duties required by law to be performed by town and city clerks, or town and city registrars, in relation to births, marriages, and deaths; and he shall have the custody of all records, books, and papers belonging to the city, relating to these matters.

To perform duties of clerks and registrars in relation to births, marriages, and deaths.
Ibid.

SECT. 3. The city registrar shall, in the month of January, annually, report to the city council a statement of the number of births, of intentions of marriage entered according to law, of marriages solemnized, and of deaths recorded during the previous year; with such other information and suggestions in relation thereto as he may deem useful; and he shall perform such other duties as may be required of him by the mayor, the board of aldermen, or the city council.

To report to city council.
Ibid.

SECT. 4. The city registrar is authorized to employ one or more assistants, to act under his authority and direction, in obtaining information concerning all matters which may legally come under his superintendence.

Assistant registrars.
Ibid.

SECT. 5. The city registrar shall receive, in full compensation for all his services under the general

Compensation of registrar.
Ibid.

Sept. 9, 1850.

laws and the ordinances of the city, such salary, and such additional allowance for necessary clerk-hire and assistants, as the city council may from time to time determine.

Compensation
of undertakers.
Ibid.

SECT. 6. The compensation required by law to be paid for obtaining and returning to the city registrar the information required concerning persons deceased, shall be understood as included in the fees provided to be paid to undertakers, in the thirty-eighth section of the ordinance relating to the public health.¹

REPORTS.

STATUTE.

Annual reports
for state library.
1866, c. 195, § 1.

1. One copy or more of the annual report, or of any special report relating to income, expenditures, or other municipal affairs of any city or town, shall be returned by the clerk thereof, on or before the last day of April in each year, to the state librarian, to be deposited and preserved in the state library.²

Penalty for
neglect.
Ibid. § 2.

2. If any city or town shall neglect or refuse to make the return required in the first section of this act, such city or town shall thereby forfeit its share of the publications hereafter to be distributed by authority of the commonwealth, and said publications shall be withheld until the provisions of this act are complied with.

¹ See "Health," *ante*, p. 416.

² For disposition of books, reports, etc., received from state, see "Library," p. 510.

REWARDS.

STATUTES.

1. The mayor and aldermen of any city, or the selectmen of any town, when, in their opinion, the public good requires it, may offer a suitable reward, to be paid by such city or town, not exceeding five hundred dollars in one case,¹ to any person who, in consequence of such offer, detects and secures any person who has committed a capital crime, or other high crime or misdemeanor in such place; and such reward shall be paid by the treasurer upon the warrant of the mayor and aldermen or selectmen.

Rewards of \$500 may be offered.
1866, c. 9, § 1.
G. S. c. 170, § 7.
5 Met. 56.
7 Met. 409.
5 Cush. 219.
7 Gray, 374.
8 Allen, 477.

2. When more than one claimant appears, and applies for the payment of such reward, the mayor and aldermen or selectmen shall determine to whom the same shall be paid; and if to more than one person, in what proportion to each; and their determination shall be final and conclusive.²

Payment of reward.
G. S. c. 170, § 8.
1866, c. 9, § 2.

3. The inhabitants of any town, and the city council of any city, are hereby authorized to raise money and expend the same for the purpose of procuring the detection and apprehension of persons committing any felony in such place.

City council may raise money and expend the same for detection of felons.
1869, c. 206, § 1.

RIOTS.³

STATUTES.

1. If any persons, to the number of twelve or more, being armed with clubs or other dangerous weapons, or if any persons, to the

Unlawful assemblies, how suppressed.

¹ The city council of a city, or the inhabitants of a town, may offer a reward larger than that here authorized to be offered by the selectmen, or mayor and aldermen. 7 Gray, 374.

² As to the time for which an offer of a reward will remain in force, if not withdrawn, see 7 Met. 409.

A watchman of the city of Boston, who, while in the discharge of his duty as such, discovers a person setting fire to a building, and prosecutes him to conviction, is not entitled to claim a reward offered by the city government for the detection and conviction of an incendiary. 5 Cush. 219.

³ For provisions in relation to calling out troops in case of riots, see "Militia," p. 530.

G. S. c. 164, § 1.
 10 Mass, 518.
 1 Gray, 480.
 5 Gray, 93.
 2 Allen, 152.

number of thirty or more, whether armed or not, are unlawfully, riotously, or tumultuously assembled in any city or town, it shall be the duty of the mayor, and of each of the aldermen of such city, and of each of the selectmen of such town, and of every justice of the peace living in any such city or town, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the commonwealth to command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons there present, in seizing, arresting, and securing such persons in custody, so that they may be proceeded with for their offence, according to law.

Refusing to
 assist when re-
 quired, or to dis-
 perse when
 commanded.
Ibid. § 2.

2. If any person present, being commanded by any of the magistrates or officers mentioned in the preceding section to aid or assist in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such magistrate or officer to depart from the place, refuses or neglects so to do, he shall be deemed one of the rioters, or persons unlawfully assembled, and may be prosecuted and punished accordingly.

Neglect of
 mayor or other
 officer to sup-
 press riots, etc.
Ibid. § 3.

3. If any mayor, alderman, selectman, justice of the peace, sheriff, or deputy sheriff, having notice of any such riotous or tumultuous and unlawful assembly, in the city or town in which he lives, neglects or refuses immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or omits or neglects to exercise the authority with which he is invested by this chapter,¹ for suppressing such assembly, and for arresting and securing the offenders, he shall be punished by fine not exceeding three hundred dollars.

Officers may
 quell unlawful
 assemblies by
 force, etc.
Ibid. § 4.

4. If any persons who are so riotously or unlawfully assembled, and who have been commanded to disperse, as before provided, refuse or neglect to disperse without unnecessary delay, any two of the magistrates or officers before mentioned may require the aid of a sufficient number of persons, in arms or otherwise, as may

¹ Chap. 164, Gen. Sts.

be necessary, and shall proceed in such manner as in their judgment is expedient, forthwith to disperse and suppress such assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law. G. S. c. 164, § 4.

5. When any armed force, called out in the manner provided by chapter thirteen of the General Statutes,¹ to suppress a tumult or riot, or to disperse any body of men acting together by force, and with intent to commit a felony, or to offer violence to persons or property, or with intent by force or violence to resist or oppose the execution of the laws of this state, arrives at the place of such unlawful, riotous, or tumultuous assembly, they shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all persons who are committing any of said offences, as they have received from the governor, or any judge of a court of record, or the sheriff of the county, and also such orders as they there receive from any two of the magistrates or officers before mentioned. Armed force, if called out, to obey orders of governor, judge, etc.
Ibid. § 5.

6. If by reason of the efforts made by any two or more of said magistrates or officers, or by their direction, to disperse such assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person, or other person then present, is killed or wounded, the magistrates and officers, and all persons acting by their order, or under their directions, and all persons acting under the two preceding sections, shall be held guiltless and fully justified in law; and if any of said magistrates or officers, or any person acting under or by the direction of any of the officers before mentioned, is killed or wounded, all persons so assembled, and all other persons who, when commanded or required, refused to aid and assist said magistrates or officers, shall be held answerable therefor. Officers, etc., to be held guiltless, though death is caused.
Rioters, etc., responsible.
Ibid. § 6.
7 Allen, 541.

7. If any of the persons so unlawfully assembled demolishes, pulls down, or destroys, or begins to demolish, pull down, or destroy any dwelling-house, or other building, or ship, or vessel, he shall be punished by imprisonment in the state prison not exceeding five years, or by fine not exceeding one thousand dollars and Riotously destroying dwelling-house; how punished, etc.
Ibid. § 7.

¹ Now chapter 320 of the acts of the year 1874. See "Militia," p. 530.

G. S. c. 164, § 7. imprisonment in the jail not exceeding two years, and shall also be answerable to any person injured, to the full amount of the damage, in an action of tort.

Towns, etc., to pay three-fourths of value of property destroyed or injured.

Ibid. § 8.

8. When property of the value of fifty dollars or more is destroyed, or property is injured to that amount, by any persons to the number of twelve or more, riotously, routously, or tumultuously assembled, the city or town within which the property was situated shall be liable to indemnify the owner thereof, to the amount of three-fourths of the value of the property destroyed, or of the amount of such injury thereto, to be recovered in an action of tort: *provided*, that the owner of such property uses all reasonable diligence to prevent its destruction or injury, and to procure the conviction of the offenders.

May recover from offenders. Ibid. § 9.

9. A city or town which pays any sum under the provisions of the preceding section may recover the same against any or all of the persons who destroyed or injured such property.

SCHOOLS.¹

GENERAL STATUTES.

Each town to have school six months in a year.

Branches taught.

G. S. c. 33, § 1.

1862, c. 7.

1870, c. 248.

1. In every town there shall be kept, for at least six months in each year, at the expense of said town, by a teacher or teachers of competent ability and good morals, a sufficient number of schools for the instruction of all the children who may legally attend public school therein, in orthography, reading, writing, drawing, English grammar, geography, arithmetic, the history of the United States, and good behavior. Algebra, vocal music, drawing, physiology, hygiene, and agriculture shall be taught, by lectures or otherwise, in all the public schools in which the school committee deem it expedient.²

¹ For sketch of the early history of the school system in Massachusetts, see 103 Mass. 94.

² This and the following section were not intended to limit the number or grade of schools which a town may provide by taxation. 10 Met. 508.

2. Every town may, and every town containing five hundred families or householders shall, besides the schools prescribed in the preceding section, maintain a school, to be kept by a master of competent ability and good morals, who, in addition to the branches of learning before mentioned, shall give instruction in general history, book-keeping, surveying, geometry, natural philosophy, chemistry, botany, the civil polity of this commonwealth and of the United States, and the Latin language. Such last-mentioned schools shall be kept for the benefit of all the inhabitants of the town¹ ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places, in the town, as the legal voters at their annual meeting determine. And in every town containing four thousand inhabitants, the teacher or teachers of the schools required by this section shall, in addition to the branches of instruction before required, be competent to give instruction in the Greek and French languages, astronomy, geology, rhetoric, logic, intellectual and moral science, and political economy. In order to ascertain that any town is subject to the requirement of this section, the number of families or householders thereof shall be determined by the latest public census which shall have been taken, by the authority either of this commonwealth or of the United States.

3. Any city or town may, and every city and town having more than ten thousand inhabitants shall, annually make provision for giving free instruction in industrial or mechanical drawing to persons over fifteen years of age, either in day or evening schools, under the direction of the school committee.

4. The city council of any city, and any town, may establish and maintain one or more industrial schools and raise and appropriate the money necessary to render them efficient. Such schools shall be under the superintendence of the board of school committee of the city or town wherein they are established, and such board shall employ the teachers, prescribe the arts, trades and occupations to be taught in such schools, and shall have the general control and management thereof: *provided*, that in no case shall the expense of any such school exceed the appropriation specifically made therefor; and *provided*, that nothing in this act

High school in towns of five hundred families.

Branches to be taught

Duration of school.

G. S. c. 33, § 2.

11 Mass. 141.

11 Cush. 178.

93 Mass. 539.

Towns of four thousand inhabitants.

1863, c. 226.

Industrial and mechanical drawing taught to persons over fifteen years of age.

1870, c. 248, § 2.

Industrial schools may be established by cities and towns.

To be under superintendence of school committee.

1872, c. 86.

Proviso.

1872, c. 86.

contained shall authorize the school committee of any city or town to compel any scholar to study any trade, art or occupation, without the consent of the parent or guardian of such scholar, and that attendance upon any such school shall not take the place of the attendance upon public schools required by law.

Sewing may be taught in public schools.
1876, c. 3.

5. Sewing shall be taught, in any city or town, in all the public schools in which the school committee of such city or town deem it expedient.

Schools may be maintained for those over twelve years of age.
G. S. c. 38, § 7.
1869, c. 305.

6. Any town may establish and maintain, in addition to the schools required by law to be maintained therein, schools for the education of persons over twelve years of age; may determine the term or terms of time in each year, and the hours of the day or evening during which said school shall be kept, and appropriate such sums of money as may be necessary for the support thereof.

School to be under superintendence of committee.
G. S. c. 33, § 8.

7. When a school is so established, the school committee shall have the same superintendence over it as they have over other schools; and shall determine what branches of learning may be taught therein.

Female assistants to be employed.
Ibid. § 9.

8. In every public school, having an average of fifty scholars, the school district, or town, to which such school belongs, shall employ one or more female assistants, unless such district or town, at a meeting called for the purpose, votes to dispense with such assistant.

Duty of ministers and town officers.
Ibid. § 11.
101 Mass. 143.

9. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, to exert their influence and use their best endeavors that the youth of their towns shall regularly attend the schools established for their instruction.

Towns to raise money for schools.
Ibid. § 12.
10 Met. 513.

10. The several towns shall at their annual meetings, or at a regular meeting called for the purpose, raise such sums of money for the support of schools as they judge necessary; which sums shall be assessed and collected in like manner as other town taxes.¹

Towns may raise money for conveyance of

11. Any town in this commonwealth may raise, by taxation or otherwise, and appropriate money to be expended by the school

¹ By St. 1869, c. 166, Boston was authorized to appropriate money for the Roxbury Latin school; but it *appeared* from the decision in the 103 of Mass. 94, that the act was unconstitutional, and after that decision was published no further appropriations were made.

committee in their discretion, in providing for the conveyance of pupils to and from the public schools.

12. Nothing contained in this chapter shall affect the right of any corporation established in a town, to manage any estate or funds given or obtained for the purpose of supporting schools therein, or in any wise affect such estate or funds.

13. A town which refuses or neglects to raise money for the support of schools, as required by this chapter, shall forfeit a sum equal to twice the highest sum ever before voted for the support of schools therein. A town which refuses or neglects to choose a school committee to superintend said schools, or to choose prudential committees in the several districts, when it is the duty of the town to choose such prudential committee, shall forfeit a sum not less than five hundred nor more than one thousand dollars, to be paid into the treasury of the county.¹

14. Three-fourths of any forfeiture paid into the treasury of the county, under the preceding section, shall be paid by the treasurer to the school committee, if any, otherwise to the selectmen of the town from which it is recovered, who shall apportion and appropriate the same to the support of the schools of such town, in the same manner as if it had been regularly raised by the town for that purpose.

15. If any person elected a member of the school committee, after being duly notified of his election in the manner in which town officers are required to be notified, refuses or neglects to accept said office, or if any member of the board declines further service, or, from change of residence or otherwise, becomes unable to attend to the duties of the board, the remaining members shall, in writing, give notice of the fact to the selectmen of the town, or to the mayor and aldermen of the city, and the two boards shall thereupon, after giving public notice of at least one week, proceed to fill such vacancy; and a majority of the ballots of persons entitled to vote shall be necessary to an election.²

¹ For special provisions in relation to school committee of Boston, see §§ 83-90, p. 689.

² The manner of filling vacancies in the school committee of Boston, as provided for in § 25 of the charter, was changed by the above provisions of the General Statutes.

When whole committee decline, new committee, how elected.
G. S. c. 38, § 18.

16. If all the persons elected as members of the school committee, after such notice of their election, refuse or neglect to accept the office, or, having accepted, afterwards decline further service, or become unable to attend to the duties of the board, the selectmen, or the mayor and aldermen, shall, after giving like public notice, proceed by ballot to elect a new board, and the votes of a majority of the entire board of selectmen, or of the mayor and aldermen, shall be necessary to an election.

Term of service of person filling vacancy.
Ibid. § 19.

17. The term of service of every member elected in pursuance of the provisions of the two preceding sections shall end with the municipal or official year in which he is chosen, and if the vacancy which he was elected to fill was for a longer period, it shall, at the first annual election after the occurrence of the vacancy, be filled in the manner prescribed for original elections of the school committee.

Women may serve on school committee.
1874, c. 339.

18. No person shall be deemed to be ineligible to serve upon a school committee by reason of sex.

Records of secretary.

G. S. c. 38, § 22.

19. The school committee shall appoint a secretary and keep a permanent record book, in which all its votes, orders, and proceedings, shall by him be recorded.

Teachers to receive and file certificate.

When and how paid.

Ibid. § 24.

See *post*, § 51.

20. Every instructor of a town or district school shall, before he opens such school, obtain from the school committee, a certificate in duplicate of his qualifications, one of which shall be deposited with the selectmen before any payment is made to such instructor on account of his services; and, upon so filing such certificate, the teacher of any public school shall be entitled to receive, on demand, his wages due at the expiration of any quarter, or term longer or shorter than a quarter, or upon the close of any single term of service, subject to the condition specified in section thirteen of chapter forty of the General Statutes.

May be dismissed, etc.
G. S. c. 38, § 25.
12 Gray, 339.

21. The school committee may dismiss from employment any teacher whenever they think proper, and such teacher shall receive no compensation for services rendered after such dismissal.¹

School committee to see that scholars are properly

22. The school committee in each city or town where there is no superintendent of schools, or some one or more of them, for the purpose of organizing and making a careful examination of

¹ Concerning payment of salary in case of dismissal under this section, see 12 Gray, 339.

the schools, and of ascertaining that the scholars are properly supplied with books, shall visit all the public schools in the town on some day during the first week after the opening of such schools, and also on some day during the two weeks preceding the close of the same, and shall also for the same purposes visit, without giving previous notice thereof to the instructors, all the public schools in the town once in each month, and they shall, at such examinations, inquire into the regulation and discipline of the schools and the habits and proficiency of the scholars.

supplied with books.
1876, c. 186, § 1.

To examine once a month without previous notice to teachers.

23. The school committee shall require the daily reading of some portion of the Bible, without written note or oral comment, in the public schools, but they shall require no scholar to read from any particular version, whose parent or guardian shall declare that he has conscientious scruples against allowing him to read therefrom, nor shall they ever direct any school-books, calculated to favor the tenets of any particular sect of Christians, to be purchased or used in any of the public schools.

Bible to be read in schools.
Sectarian books excluded.
1862, c. 57.

24. The school committee shall direct what books shall be used in the public schools, and shall prescribe, as far as is practicable, a course of studies and exercises to be pursued in said schools.

Committee to direct what books shall be used in schools.
1876, c. 47, § 1.

25. In any town or city in this commonwealth a change may be made in the school-books used in the public schools by a vote of two-thirds of the whole school committee thereof, at a meeting of said committee, notice of such intended change having been given at a previous meeting of said committee.

May change books by two-thirds vote of whole committee.
Ibid. § 2.

26. If any change is made, as provided for in the foregoing section, each pupil then belonging to the public schools and requiring the substituted book shall be furnished with the same by the school committee, at the expense of said town or city.

If books are changed, to be furnished at expense of town or city.
Ibid. § 3.

27. The school committee shall procure, at the expense of the city or town,¹ a sufficient supply of text-books for the public schools, and give notice of the place where they may be obtained. Said books shall be furnished to the pupils at such prices as merely to reimburse the expense of the same. The school committee may also procure, at the expense of the city or town, such

Committee to procure text-books, apparatus, etc.
G. S. c. 33, § 29.
13 Pick. 229.

¹ This authorizes the committee either to get the books on the credit of the town, or to buy the books with their own money, and charge them to the town. 13 Pick. 229.

G. S. c. 33, § 29. apparatus, books of reference, and other means of illustration as they deem necessary for the schools under their supervision, in accordance with appropriations therefor previously made.

Text-books may be furnished by cities and towns to pupils in public schools. 1873, c. 106. 28. Any city, by an ordinance of the city council, and any town by legal vote, may authorize the school committee to purchase text-books for use in the public schools, said text-books to be the property of the city or town, and to be loaned to pupils under such regulations as the school committee may provide.

For certain scholars at expense of town. G. S. c. 33, § 30. 29. If any scholar is not furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee at the expense of the town.

Expense of books so supplied to be taxed to parents, etc. Ibid. § 31. 30. The school committee shall give notice in writing to the assessors of the town, of the names of the scholars supplied with books under the provisions of the preceding section, of the books so furnished, the prices thereof, and the names of the parents, masters or guardians, who ought to have supplied the same. The assessors shall add the price of the books to the next annual tax of such parents, masters, or guardians; and the amount so added shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes.

If parents unable to pay, tax may be omitted. Ibid. § 32. 31. If the assessors are of opinion that any parent, master or guardian, is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of such books, or shall add only a part thereof, to his annual tax, according to their opinion of his ability to pay.

Duty of committee where school is for benefit of whole town. Ibid. § 33. 32. In any town containing five hundred families, in which a school is kept for the benefit of all the inhabitants, as before provided, the school committee shall perform the like duties in relation to such school, the house where it is kept, and the supply of all things necessary therefor, as the prudential committee may perform in a school district.

School committee of a city may appoint superintendent of schools, and fix compensation. 1874, c. 272. 111 Mass. 87. 33. The school committee of any city may appoint and fix the compensation of a superintendent of public schools, a majority vote of the whole board being necessary for that purpose; and in every city where a superintendent is appointed, the school committee shall receive no compensation.

SCHOOL-HOUSES.

34. Every town not divided into school districts shall provide and maintain a sufficient number of school-houses, properly furnished and conveniently located, for the accommodation of all the children therein entitled to attend the public schools; and the school committee, unless the town otherwise direct, shall keep them in good order, procuring a suitable place for the schools, where there is no school-house, and providing fuel and all other things necessary for the comfort of the scholars therein, at the expense of the town. A town which for one year refuses or neglects to comply with the requisitions of this section shall forfeit a sum not less than five hundred nor more than one thousand dollars, under the same provisions as those made in sections fourteen and fifteen of this chapter [§§ 13 and 14 of this digest].

Towns not districted to maintain school-houses, etc.
G. S. c. 33, § 36.
1871, c. 145.

35. When land has been designated by a city council, town, school district, or those acting under its authority, or determined upon by the mayor and aldermen of a city, or by the selectmen of a town, as a suitable place for the erection of a school-house and necessary buildings, or for enlarging a school-house or school-house lot, the mayor and aldermen, or the selectmen may proceed to select, at their discretion, and to lay out a school-house lot or an enlargement thereof, and to appraise the damages to the owner of such land in the manner provided for laying out town ways and appraising damages sustained thereby; and upon such selection and laying out of such lot, or any enlargement thereof being accepted and adopted by the city council, or the town, the land shall be taken, held and used for the purpose aforesaid. But no lot so taken or enlarged shall exceed in the whole eighty square rods, exclusive of the land occupied by the school buildings.

Damages for land taken for school-houses.
1874, c. 392, § 1.
2 Gray, 414.
10 Gray, 40.
4 Allen, 508.
102 Mass. 512.

36. When the owner feels aggrieved by the laying out or enlargement of such lot, or by the award of damages, he may, upon application therefor in writing to the county commissioners, within one year thereafter, have the matter of his complaint tried by a jury, and the jury may change the location of such lot¹ or enlargement, and assess damages therefor. The proceedings shall in all

Owner of land may have jury.
Proceedings.
Damages and costs.
G. S. c. 33, § 39.
2 Gray, 414.
See G. S. c. 43.

¹ This power to change the location can be exercised only within the petitioner's land. 109 Mass. 225.

G. S. c. 38, § 39. respects be conducted in the manner provided in cases of damages by laying out highways. If the damages are increased, or the location changed, by the jury, the damages and all charges shall be paid by the town; otherwise the charges arising on such application shall be paid by such applicant. The land so taken shall be held and used for no other purpose than that contemplated by chapter thirty-eight of the General Statutes,¹ and shall revert to the owner, his heirs, or assigns, upon the discontinuance there, for one year, of such school as is required by law to be kept by the town.

Committee of town not districted to have charge of school-houses. Ibid. § 40. 37. The school committee of a town in which the school district system has been abolished,² or does not exist, shall have the general charge and superintendence of the school-houses in said town, so far as relates to the use to which the same may be appropriated.

Provisions of chapter to apply to cities, except, etc. Ibid. § 41. 38. Except as may be otherwise provided in their respective charters, or acts in amendment thereof, the provisions of chapter thirty-eight of the General Statutes, so far as applicable, shall apply to cities.

REGISTERS AND RETURNS.

Town-clerks to deliver registers, etc., to school committee. G. S. c. 40, § 1. 39. The clerks of the several cities and towns, upon receiving from the secretary of the board of education the school registers and blank forms of inquiry for school returns, shall deliver them to the school committee of such cities and towns.

If not received. Ibid. § 2. 40. If a school committee fails to receive such blank forms of return on or before the last day of March, they shall forthwith notify the secretary of the board of education, who shall transmit such forms as soon as may be.

School committee to make a record of all children between ages of five and fifteen. 1874, c. 303, § 1. 41. The school committees shall annually, in the month of May, ascertain, or cause to be ascertained, the names and ages of all persons belonging to their respective towns and cities on the first day of May, between the ages of five and fifteen years, and make a record thereof.

¹ On this point see 2 Gray, 414.

² By St. 1869, cc. 110 and 423, the district system was abolished. By St. 1870, c. 196, towns were authorized in certain cases to re-establish the districts. By St. 1873, c. 95, they were authorized again to abolish them.

42. The school committee shall annually, on or before the last day of the following April, certify under oath, the numbers so ascertained and recorded, and also the sum raised by such city or town for the support of schools during the preceding school year, including only wages and board of teachers, fuel for the schools, and care of the fires and school-rooms, and they shall transmit such certificate to the secretary of the board of education. The form of such certificate shall be as follows, to wit:—

To certify number of children, also sum raised for support of schools.
1874, c. 303, § 2.

We, the school committee of _____, do certify that on the first day of May, in the year _____, there were belonging to said town the number of _____ persons between the ages of five and fifteen; and we further certify that said town raised the sum of _____ dollars for the support of public schools for the preceding school year, including only the wages and board of teachers, fuel for the schools and care of fires and school-rooms; and that said town maintained, during said year, each of the schools required to be kept by the first section of the thirty-eighth chapter of the General Statutes for a period not less than six months; and we further certify that said town maintained during said year _____ school for the benefit of all the inhabitants of the town as required by section two of chapter thirty-eight of the General Statutes for _____ months and _____ days.

Form of certificate.

} *School Committee.*

[ss.]
On this _____ day of _____, personally appeared the above-named school committee of _____, and made oath that the above certificate, by them subscribed, is true.

Before me,

Justice of the Peace.

43. The school committee shall cause the school registers to be faithfully kept in all the public schools, and shall annually, on or before the last day of April, return the blank forms of inquiry, duly filled up, to the secretary of the board of education; and shall also specify in said returns the purposes to which the money received by their town or city from the income of the school fund has been appropriated.

Registers and returns.
G. S. c. 40, § 5.
See *post*, § 51.
2 Allen, 592.

Committee's report; to whom sent; where deposited; to be printed.
G. S. c. 40, § 6.
101 Mass. 142.

44. The school committee shall annually make a detailed report¹ of the condition of the several public schools, which report shall contain such statements and suggestions in relation to the schools as the committee deem necessary or proper to promote the interests thereof. The committee shall cause said report to be printed for the use of the inhabitants, in octavo, pamphlet form, of the size of the annual reports of the board of education, and transmit two copies thereof to the secretary of said board, on or before the last day of April, and deposit one copy in the office of the clerk of the city or town.

When report is not made.
Ibid. § 7.

45. When a school committee fails within the prescribed time to make either the returns or report required of them by law, the secretary of the board of education shall forthwith notify such committee, or the clerk of the city or town, of such failure; and the committee or clerk shall immediately cause the same to be transmitted to the secretary.

When informal, etc.
Ibid. § 8.

46. If a report or return is found to be informal or incorrect, the secretary shall forthwith return the same, with a statement of all deficiencies therein, to the committee for its further action.

Penalty for neglect to report
Ibid. § 9.

47. The returns or reports of a city or town so returned by the secretary for correction, or which have not reached his office within the time prescribed by law, shall be received by him if returned during the month of May; but in all such cases ten per cent. shall be deducted from the income of the school fund which such city or town would have been otherwise entitled to. If such returns or reports fail to reach his office before the first day of June, then the whole of such city or town's share of the income shall be retained by the treasurer of the commonwealth, and the amount so retained, as well as the ten per cent. when deducted, shall be added to the principal of the school fund. And such city or town shall, in addition thereto, forfeit not less than one hundred nor more than two hundred dollars: *provided, however*, if said returns and reports were duly mailed in season to reach said office within the time required by law, then the city or town from which said returns or reports are due shall be exempt from the forfeiture, otherwise incurred.

¹ This does not restrict the committee to the publication of the whole of their report for the year at one time; instalments of the report may be published before the whole is prepared. 101 Mass. 142.

48. The clerk of each city and town shall deliver one copy of the reports of the board of education and its secretary, to the secretary of the school committee of the city or town, to be by him preserved for the use of the committee, and transmitted to his successor in office; and two additional copies of said reports, for the use of said committee; and shall also deliver one copy of said reports to the clerk of each school district, to be by him deposited in the school district library, or, if there is no such library, carefully kept for the use of the prudential committee, teachers, and inhabitants, of the district, during his continuance in office, and then transmitted to his successor; and in case the city or town shall not be districted, said reports shall be delivered to the school committee, and so deposited by them as to be accessible to the several teachers and to the citizens; and such reports shall be deemed to be the property of the town or city, and not of any officer, teacher, or citizen, thereof.

Reports, etc., of board of education, how received, delivered, and for what purpose. In whom property of. G. S. c. 40, § 10.

49. When the school committee of a city or town is not less than thirteen in number, the chairman and secretary thereof may, in behalf of the committee, sign the annual school returns and the certificate required by sections forty-two and forty-three.

When to sign reports. Ibid. § 11.

50. A city or town which has forfeited any part of its portion of the income of the school fund, through the failure of the school committee to perform their duties in regard to the school report and school returns, may withhold the compensation of the committee.

Penalty on committee for neglect in returns, etc. Ibid. § 12.

51. The several school teachers shall faithfully keep the registers furnished to them, and make due return thereof to the school committee, or such person as they may designate, and no teacher shall be entitled to receive payment for services until the register, properly filled up and completed, shall be so returned.¹

Registers, how kept. Teachers not to draw pay until return of register. Ibid. § 13. See ante, § 43. 2 Allen, 592.

ATTENDANCE OF CHILDREN IN THE SCHOOLS.

52. Every person having under his control a child between the ages of eight and fourteen years shall annually cause such child to attend some public day school in the city or town in which he resides, at least twenty weeks, which time shall be divided into two

Children to be sent to school by parents, etc. Penalty for neglect. Excuses for neglect.

¹ The school committee have no right to waive the keeping of the register by a teacher. 2 Allen, 592.

1873, c. 279, § 1. terms, each of ten consecutive weeks, so far as the arrangement of
 1874, c. 233. school terms will allow; and for every neglect of such duty the party offending shall forfeit to the use of the public schools of such city or town a sum not exceeding twenty dollars; but if the party so neglecting was not able, by reason of poverty, to send such child to school, or such child has attended a private day school, approved by the school committee of such city or town, for a like period of time, or is regularly attending a public or private day school, known as a half-time school, also approved by them, or that such child has been otherwise furnished with the means of education for a like period of time, or has already acquired the branches of learning taught in the public schools, or if his physical or mental condition is such as to render such attendance inexpedient or impracticable, the penalty before mentioned shall not be incurred: *provided*, that no objection shall be made by the school committee to any such school on account of the religious teaching in said school.

Truant officers and school committee to inquire and report. 1873, c. 279, § 2. 53. The truant officers¹ and the school committee of the several cities and towns shall vigilantly inquire into all cases of neglect of the duty prescribed in the preceding section, and ascertain the reasons, if any, therefor; and such truant officers, or any of them, shall, when so directed by the school committee, prosecute, in the name of the city or town, any person liable to the penalty provided for in the preceding section. Justices of police or district courts, trial justices, trial justices of juvenile offenders, and judges of probate shall have jurisdiction within their respective counties of the offences described in this and the previous section.

Children to attend where they reside. G. S. c. 41, § 3. 54. All children within the commonwealth may attend the public schools in the place in which they have their legal residence, subject to the regulations prescribed by law.

Admission to high school, how regulated. Ibid. § 4. 55. The school committee shall determine the number and qualifications of the scholars to be admitted into the school kept for the use of the whole town.

Children may attend in adjoining town, and committee pay for instruction. Ibid. § 5. 56. Children living remote from any public school in the town in which they reside may be allowed to attend the public schools in an adjoining town, under such regulations, and on such terms, as the school committees of the said towns agree upon and pre-

¹ See powers and duties of truant officers, § 69, p. 685.

scribe; and the school committee of the town in which such child resides shall pay out of the appropriations of money raised in said town for the support of schools the sum agreed upon. G. S. c. 41, § 5.

57. Minors under guardianship, their father having deceased, may attend the public schools of the city or town of which their guardian is an inhabitant. Wards, where may attend. Ibid. § 6.

58. With the consent of school committees first obtained, children may attend school in cities and towns other than those in which their parents or guardians reside; but whenever a child resides in a city or town different from that of the residence of the parent or guardian, for the sole purpose of attending school there, the parent or guardian of such child shall be liable to pay to such city or town, for tuition, a sum equal to the average expense per scholar for such school for the period the child shall have so attended.¹ Children may attend in other towns than place of residence, and parents pay etc. Ibid. § 7. 1873, c. 202, § 4. 1876, c. 186, § 2. 103. Mass. 104.

59. The school committee shall not allow any child to be admitted to or connected with the public schools, who has not been duly vaccinated. Children to be vaccinated. G. S. c. 41, § 8.

60. No person shall be excluded from a public school on account of the race, color, or religious opinions of the applicant or scholar. Color, etc., not to exclude. Ibid. § 9. 5 Cush. 198. 12 Allen, 127.

61. Every member of the school committee under whose directions a child is excluded from a public school, and every teacher of such school from which a child is excluded, shall, on application by the parent or guardian of such child, state in writing the grounds and reason of the exclusion. Teachers, etc., to state grounds of exclusion. Ibid. § 10.

62. A child unlawfully excluded² from any public school shall recover damages therefor in an action of tort, to be brought in the name of such child by his guardian or next friend against the city or town by which such school is supported. Damages for exclusion. Ibid. § 11. 23 Pick. 224. 8 Cush. 160. 7 Gray, 245. 12 Allen, 127.

63. The plaintiff in such action may, by filing interrogatories for discovery, examine any member of the school committee, or any other officer of the defendant city or town, as if he were a party to the suit. Interrogatories to committee, etc. Ibid. § 12.

¹ Towns and cities are not authorized by law to open their schools to children whose parents or guardians reside in another state; and, if they do so, no promise, expressed or implied, of the parents or guardians, to pay for the tuition, can be enforced. 103 Mass. 104.

² On this point see 8 Cush. 160, and 111 Mass. 499.

EMPLOYMENT OF CHILDREN, AND REGULATIONS RESPECTING THEM.

Child under ten years not to be employed in manufacturing, etc., establishments.

1876, c. 52, § 1.

64. No child under the age of ten years shall be employed in any manufacturing, mechanical or mercantile establishment in this commonwealth, and any parent or guardian who permits such employment shall for such offence forfeit a sum of not less than twenty nor more than fifty dollars, for the use of the public schools of the city or town.

Child under fourteen years not to be so employed, unless attending school twenty weeks during the previous year.

Ibid. § 2.

65. No child under the age of fourteen years shall be so employed, unless during the year next preceding such employment he has attended some public or private day school, under teachers approved by the school committee of the place where such school is kept, at least twenty weeks, which time may be divided into two terms, each of ten consecutive weeks, so far as the arrangements of school terms will allow; nor shall such employment continue, unless such child shall attend school as herein provided, in each and every year; and no child shall be so employed who does not present a certificate, made by or under the direction of said school committee, of his compliance with the requirements of this act: *provided, however*, that a regular attendance during the continuance of such employment in any school known as a half-time day school, or an attendance in any public or private day school, twenty weeks, as above stated, may be accepted by said school committee as a substitute for the attendance herein required.

Proviso.

Penalty on owner, superintendent, overseers, parents and guardians.

Ibid. § 3.

66. Every owner, superintendent or overseer in any establishment above named, who employs or permits to be employed, any child in violation of the second section of this act, and every parent or guardian who permits such employment, shall for such offence forfeit a sum not less than twenty nor more than fifty dollars for the use of the public schools of such city or town.

Truant officers to visit establishments, and report violations of this act.

Ibid. § 4.

67. The truant officers shall, at least once in every school term, and as often as the school committee require, visit the establishments described by this act in their several cities and towns and inquire into the situation of the children employed therein, ascertain whether the provisions of this act are duly observed, and report all violations to the school committee.

TRUANTS.

68. Each city and town shall make all needful provisions and arrangements concerning habitual truants and children between the ages of seven and fifteen years who may be found wandering about in the streets or public places of such city or town, having no lawful occupation or business, not attending school, and growing up in ignorance, and shall also make such by-laws as shall be most conducive to the welfare of such children, and to the good order of such city or town; and shall provide suitable places for the confinement, discipline and instruction of such children: *provided*, that said by-laws shall be approved by the superior court, or a justice thereof, or by the judge of probate of the county.¹

Needful provisions to be made by cities and towns concerning habitual truants.

1873, c. 262, § 1.

Proviso.

69. The school committee of the several cities and towns shall appoint and fix the compensation of two or more suitable persons, to be designated as truant officers, who shall, under the direction of said committee, inquire into all cases arising under such by-laws, and shall alone be authorized, in case of violation thereof, to make complaint and carry into execution the judgment thereon; and said officers are authorized to serve all legal processes issued by the courts in pursuance of said act, but they shall not be entitled to or receive any fees therefor.

Truant officers to be appointed by school committees.

Ibid. § 2.

1874, c. 233.

70. Any minor convicted under such by-law of being an habitual truant, or of wandering about in the streets and public places of any city or town, having no lawful employment or business, not attending school and growing up in ignorance, shall be committed to any institution of instruction or suitable situation provided for the purpose, under the authority of section one of this act [§ 68 of this digest], or by law, for such time, not exceeding two years, as the justice or court having jurisdiction may determine. Any minor so committed may, upon proof of amendment, or for other sufficient cause shown upon a hearing of the case, be discharged by such justice or court.

Habitual truants may be committed to any institution of instruction for two years.

1873, c. 262, § 3.

71. Justices of police or district courts, trial justices, trial justices of juvenile offenders, and judges of probate, shall have jurisdiction within their respective counties, of the offences described in this act.

Jurisdiction. Ibid. § 4.

¹ For act concerning the care and education of neglected children (1866, c. 283) see "House of Reformation," p. 487.

Schools for confinement of truant to be established when required by three cities and towns in any county.
1873, c. 262, § 5.

72. When three or more cities or towns in any county shall so require, the county commissioners shall establish, at convenient places therein, other than the jail or house of correction, at the expense of the county, truant schools, for the confinement, discipline and instruction of minor children convicted under the provisions of this act, and shall make suitable provisions for the government and control of said schools, and for the appointment of proper teachers and officers thereof.

Expense of support in schools not to exceed two dollars a week.
Ibid. § 6.

73. Any city or town may assign any such truant school as the place of confinement, discipline and instruction for persons convicted under the provisions of this act; and shall pay such sum for the support of those committed thereto as the county commissioners shall determine, not exceeding the rate of two dollars per week for each person.

Truants may be committed to the state primary school at Monson with the assent of the board of state charities.
Ibid. § 7.

74. Any city or town may, with the assent of the board of state charities, assign the state primary school at Monson as the place of confinement, discipline and instruction for persons convicted under the provisions of this act, instead of the truant schools heretofore mentioned; and shall pay for the support of such persons committed thereto, such sum as the inspectors of said school shall determine, not exceeding two dollars per week for each person. Any minor so committed may, upon satisfactory proof of amendment, or for other sufficient cause, be discharged by the board of state charities.

MASSACHUSETTS SCHOOL FUND.

School fund, how invested.
Income only to be used.
G. S. c. 36, § 1.

75. The present school fund of this commonwealth, together with such additions as may be made thereto, shall constitute a permanent fund, to be invested by the treasurer, with the approbation of the governor and council, and called the "Massachusetts School Fund;" the principal of which shall not be diminished, and the income of which, including the interest on notes and bonds taken for sales of Maine lands and belonging to said fund, shall be appropriated as hereinafter provided.

Distribution of one-half of income of school fund among towns and cities.
1874, c. 348, § 1.

76. One half of the annual income of the Massachusetts school fund shall be apportioned and distributed for the support of public schools without a specific appropriation, and in the manner following, to wit: Each town complying with all laws in force relating

to the distribution of said income, and whose valuation of real and personal estate, as shown by the last returns thereof, does not exceed one million dollars, shall annually receive two hundred dollars; each town complying as aforesaid, whose valuation is more than one million, and does not exceed three million dollars, shall receive one hundred and fifty dollars; and each town complying as aforesaid, whose valuation is more than three million and does not exceed five million dollars, shall receive one hundred dollars. The remainder of said moiety, after the division above provided, shall be distributed to all the towns and cities of the commonwealth whose valuation does not exceed ten million dollars, in proportion to the number of persons belonging to each, between five and fifteen years of age. 1874, c. 348, § 1.

77. All money appropriated for other educational purposes, unless otherwise provided in the act appropriating the same, shall be paid from the other half of said income. If the income in any year exceeds such appropriations, the surplus shall be added to the principal of said fund. Appropriations for educational purposes paid from other half. Balance to be added to principal. Ibid. § 2.

78. The income of the school fund appropriated by the preceding section to the support of public schools, which may have accrued upon the thirty-first day of December of each year, shall be apportioned by the secretary and treasurer, and on the twenty-fifth day of January be paid over by the treasurer to the treasurers of the several towns and cities for the use of the public schools, according to the number of persons therein between the ages of five and fifteen years, ascertained and certified as provided in sections forty-one and forty-two. But no such apportionment shall be made to a town or city which has not complied with the provisions of sections forty-three and forty-four of this digest, or which has not raised by taxation for the support of schools during the school year embraced in the last annual returns, including only wages and board of teachers, fuel for the schools, and care of fires and school-rooms, a sum not less than one dollar and fifty cents for each person between the ages of five and fifteen years belonging to said town or city on the first day of May of said school year. How apportioned for schools. When towns are not entitled to share. G. S. c. 36, § 3. 1867, c. 98.

79. The income of the school fund received by the several cities and towns shall be applied by the school committees thereof Income received by towns, how applied.

G. S. c. 36, § 4. to the support of the public schools therein, but said committees may, if they see fit, appropriate therefrom any sum, not exceeding twenty-five per cent. of the same, to the purchase of books of reference, maps, and apparatus for the use of said schools.

Distribution of income of school fund not to be made to towns which do not comply with law.

1865, c. 142, § 1.

G. S. c. 36, §§ 2,

3.

G. S. c. 38, §§ 1,

2.

G. S. c. 40, §§ 5,

6.

1862, c. 7, § 57.

80. No appointment and distribution of the annual income of the school fund, as provided by the second and third sections of chapter thirty-six of the General Statutes,¹ shall be made to any town or city which has not complied with the requisitions of the first and second sections of chapter thirty-eight [§§ 1, 2 of this digest], and the fifth and sixth sections of chapter forty of the General Statutes [§§ 43, 44 of this digest], and of any amendments to either of said sections; or which has not raised by taxation for the support of schools, during the school year embraced in the last annual returns, including only wages and board of teachers, fuel for the schools, and care of fires and school-rooms, a sum not less than three dollars for each person, between the ages of five and fifteen years, belonging to said town or city on the first day of May of said school year.

Income of school fund, how distributed.

1869, c. 168, § 1.

G. S. c. 36, §§ 2,

3.

G. S. c. 38, §§ 1,

2.

G. S. c. 40, §§ 5,

6.

1865, c. 142.

81. In the distribution of the moiety of the income of the school fund, for the support of the public schools of the state, every city and town complying with all laws in force relating to the distribution of the same shall annually receive one hundred dollars; and the residue of said moiety shall annually be apportioned among the several cities and towns, in proportion to the number of children in each between the ages of five and fifteen years.

Towns keeping high schools thirty-six weeks

a year, not to

forfeit share of.

1866, c. 208, § 2.

G. S. c. 38, § 2.

1865, c. 142, § 1.

1862, c. 7, § 57.

82. Any town which shall maintain the school required to be maintained by the second section of chapter thirty-eight of the General Statutes [§ 2 of this digest], not less than thirty-six weeks, exclusive of vacations in each year, shall not be liable to the forfeiture provided in section first, chapter one hundred and forty-two of the laws of the year eighteen hundred and sixty-five [§ 80 of this digest], for non-compliance with the requisitions of the aforesaid second section.²

¹ The second section of chap. 36 was repealed by St. 1870, c. 45; and that statute was repealed by St. 1874, c. 348, §§ 76-77 in the text. The third section of chap. 36, amended by St. 1867, c. 98, is § 78 in the text.

² For some account of the local school funds of Boston, see appendix to auditor's annual report.

SCHOOL COMMITTEE OF BOSTON.

83. The qualified voters of the city of Boston, at the annual municipal election occurring in the year eighteen hundred and seventy-five; shall elect twenty-four persons, inhabitants of the city, to constitute, with the mayor of said city, who shall be *ex officio* chairman thereof, the school committee of said city, the members of which shall serve without compensation; the eight persons who shall have received the largest number of votes shall hold their office for three years; the eight persons who shall have received the next largest number of votes shall hold their office for two years; and the eight persons who shall have received the next largest number of votes shall hold their office for one year. In case two or more persons elected shall have received an equal number of votes, those who are the seniors by age shall, for the division into classes hereby required, be classified as if they had received the largest number of votes in the order of ages. And thereafter the qualified voters shall annually elect eight persons, inhabitants of the city, to serve as members of the school committee for the term of three years.¹

School committee to consist of mayor and twenty-four persons elected by the voters.
1875, c. 241, § 1.

Eight members to be elected every year.

84. It shall be the duty of the clerks of the several wards of said city to make returns to the city clerk, after each municipal election, of the votes cast in their several wards for members of the school committee, and after the entry by the city clerk of said returns, or of an abstract thereof, in the official book kept for such purpose, it shall be the duty of the board of aldermen to examine and compare said returns, and thereupon to cause certificates of election to be issued to such and so many of the members of said school committee as appear to have been chosen at such election; but said school committee shall be the final judge of the qualifications and elections of its own members.²

Clerks of wards to make returns of votes to city clerk.
Ibid. § 2.

85. The persons so chosen as members of the school committee shall meet and organize on the second Monday in January, in the year eighteen hundred and seventy-six, and annually thereafter, at

Organization of committee.
Ibid. § 3.

¹ The city solicitor is of the opinion that vacancies in this board must be filled in the manner provided by Gen. Sts. c. 88, § 17. See § 15, *ante*. The number entitled to vote is the whole number of active members of both bodies, whether present or absent, at any meeting held for the purpose of filling the vacancy.

² On this point see *Peabody vs. Boston*, 115 Mass. 383.

1875, c. 241, § 3. such time and place as the mayor may appoint. The unexpired term of office of all members and officers of the school committee as hitherto organized and established shall terminate immediately upon the organization of the school committee elected under this act.

A majority shall constitute a quorum.
Ibid. § 4.

86. A majority of all the members of the school committee shall be necessary to constitute a quorum for the transaction of business. They shall choose a secretary, not of their own number, who shall also serve as secretary to the board of supervisors, an auditing clerk, and such other subordinate officers as they may deem expedient, and shall define their duties, fix their compensation, and may remove them at pleasure.

Powers and duties of committee.
Ibid. § 5.
See § 56 charter, ante.

23 Pick. 224.
5 Cush. 198.
12 Gray, 61.
10 Allen, 149.
12 Allen, 127.
103 Mass. 94.
105 Mass. 475.
116 Mass. 365.

87. The school committee shall have the supervision and direction of the public schools, and shall exercise the powers and perform the duties in relation to the care and management of schools which are now exercised and performed by the school committee of said city, except so far as they may be changed or modified by this act, and shall have the powers and discharge the duties which may hereafter be imposed by law upon the school committees of cities and towns.¹ They may elect teachers, and may discharge those now in office, as well as those hereafter elected. They shall appoint janitors for the school-houses, fix their compensation, designate their duties, and may discharge them at pleasure. They may fix the compensation of the teachers, but the salaries established at the commencement of each school year shall not be increased during such year.

Building or altering school-houses.
1875, c. 241, § 6.

88. Whenever, in the judgment of the school committee, a new building or an addition to or alteration of a building is needed for school purposes, of an estimated cost of over one thousand dollars, they shall make a statement in writing to the city council of the necessity of the proposed building, addition or alteration; and no contract for the purchase or lease of land, or for the erection, purchase or lease of any building, or for any addition to or alteration of any building for school purposes, shall be authorized by the city council until such statement has been made, nor until the locality and plans for the same have been approved by the school committee, or by a sub-committee thereof, duly authorized to approve the same.

¹ For power of fixing times of vacations and of granting holidays, see 12 Gray, 61; for powers in expelling a scholar, see 105 Mass. 475.

89. The school committee shall elect a superintendent of schools and a board of supervisors, consisting of not more than six members, and shall define their duties and fix their compensation. The superintendent and the members of the board of supervisors shall hold office for the term of two years, unless sooner removed; and they may be removed for cause at any time by the school committee. No member of either branch of the city council or of the school committee shall hold the office of superintendent or supervisor, and no member of either branch of the city council shall be a member of the school committee. The superintendent shall be a member of the board of supervisors, and shall, when present, preside at their meetings.

Superintendent and supervisors to be elected by committee.
1875, c. 241, § 7.

90. The votes of a majority of the whole number of members of the school committee shall be necessary to elect the superintendent of schools, the supervisors, the head-masters of the Latin, normal and high schools, the masters of the grammar schools, or the director of a special study or exercise.

Majority of whole committee required to elect superintendent, masters, etc.
Ibid. § 8.

91. The action of the city council and of the school committee of the city of Boston, in establishing and maintaining the school called the Boston normal school, is ratified, confirmed, and made valid, to the same extent as if, prior to the establishment thereof, and during its continuance, and at the present time, the said city council, and said school committee, or either of them, had authority to establish and maintain the same; and the said school committee shall have the same power to maintain and continue the said normal school as they have now to maintain and continue the other public schools of said city.

Establishment of Boston normal school ratified and made valid.
1874, c. 167.

92. By a resolve approved April 27, 1869, the governor was authorized to issue to the city of Boston such arms for the use of the English high and Latin schools in said city as, in his judgment, may be so distributed without detriment to the militia service: *provided*, the city of Boston shall be held responsible for the return in good order and condition of said arms whenever his excellency the governor shall so direct.

Arms may be issued for use of English high and Latin schools.
Resolves, 1869, c. 40.

CHARLESTOWN FREE SCHOOLS FUND.

93. Whereas, the education of youth has ever been considered by the wise and good as of the highest consequence to the safety and

Preamble to enactment.

St. 1793; special laws, v. 1, p. 444. See also v. 2, p. 376.

1841, c. 25.

1847, c. 29, § 11.

1873, c. 286, § 12.

happiness of a free people; and, whereas, sundry persons have bequeathed real and personal property to the town of Charlestown, the rents and profits thereof to be solely and forever applied to and for the use of the free schools in said town; and, whereas, many inconveniences have arisen in the present method of executing their generous designs.

School committee to be trustees.

St. 1793, § 1.

1841, c. 25.

See § 101.

Donations to be under their charge.

St. 1793, § 2.

1847, c. 29, § 11.

Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the school committee of the city of Charlestown shall be the trustees of Charlestown free schools.

94. All the donations which have been given to said town for the use and support of their schools, whether real, personal or mixed, shall be, pursuant to the consent, and at the request, of said town, had in a public town meeting on the fourth day of March, one thousand seven hundred and ninety-three, and they are hereby confirmed unto the said school committee, for the time being, forever, for the sole use and benefit of said schools, agreeably to the true intent and meaning of the donor.

Seal of trustees.

St. 1793, § 3.

1847, c. 29, § 11.

95. That the said committee, for the time being, shall have one common seal, which they may make use of in any cause or business that relates to the said office of trustees of said schools; and they shall have power and authority to break, change and renew the same, from time to time, as they shall see fit; and they may sue and be sued in all actions, real, personal and mixed, and prosecute and defend the same to final judgment and execution, by the name of the trustees of Charlestown free schools.

Powers and duties of trustees.

St. 1793, § 4.

1847, c. 29, § 11.

96. The said trustees shall be the trustees, visitors and governors of the Charlestown free schools; that they shall have power to elect a president, treasurer and secretary, and such other officers as they shall judge necessary and convenient; but no pecuniary compensation shall be allowed the said trustees, without the consent of said town of Charlestown; and to make and to ordain such laws, rules and orders for the good government of said schools as to them shall seem most fit and requisite, all of which shall be observed by the officers and scholars of said schools, upon the penalties therein contained: *provided*, notwithstanding, that the said rules, laws and orders be no ways repugnant to the laws of this commonwealth.

Trustees may

97. The trustees are rendered capable in law to take and receive

by gift, grant, devise or bequest, or otherwise, any estate, real or personal, which may be granted for the benefit of said Charlestown free schools: *provided*, the annual income thereof shall not exceed the sum of six hundred pounds; to have and to hold the same under such provisions and limitations as may be expressed in any deed or conveyance to them made by the donor or donors; and that all deeds and instruments, which said trustees shall lawfully make, shall, when made in the name of said trustees, and signed and delivered by the president and sealed with their common seal, bind the said trustees and their successors, and be valid in law.

98. The trustees shall have full power and authority to determine at what times and places their meetings shall be held, and upon the manner of notifying the trustees to convene at such meetings; and they shall have full power and authority to determine and prescribe the powers and duties of their respective officers and the tenures of their offices.

Meetings of trustees.
Ibid. § 6.

99. The trustees shall, annually, lay before the town the particulars of their proceedings, and the state of their funds.

To make annual report.
Ibid. § 7.

100. The qualified voters of each ward shall elect six persons, who shall be residents of the ward for which they are elected, to be members of the school committee, and they shall constitute the school committee, and have the care and superintendence of the public schools; and said school committee shall have all the powers and privileges, and be subject to all the liabilities set forth in an act passed by the legislature of Massachusetts in the year of our Lord one thousand seven hundred and ninety-three, entitled "An act to incorporate certain persons by the name of the trustees of Charlestown free schools," and all acts in addition thereto.

Powers of school committee confirmed.
1847, c. 29.
(City charter.)

101. The two corporations holding trust funds in said city of Charlestown, one being the trustees of the Charlestown free schools, and the other the trustees of the poor's fund in the town of Charlestown, shall continue to manage their funds and disburse the income thereof according to the terms of their respective trusts. The members of the school committee within the present limits of Charlestown, for the time being, shall be the corporation first above named.

Trustees to continue to manage school and poor funds according to the terms of their trusts.
1873, c. 286, § 12.

ORDINANCE.¹

SCHOOL COMMITTEE.

School committee to elect and remove instructors, and determine their salaries, etc.
Dec. 18, 1855.

May choose secretary, superintendent, etc.

SECTION 1. The school committee are authorized to elect all such instructors as they may deem proper for the public schools, and contract with them and determine the amount of their respective salaries; they are also authorized to dismiss and remove any instructor from said schools, when they deem it proper and expedient, and, generally, they shall have all the powers in relation to the care and management of the public schools, which the selectmen of towns or school committees are authorized by the laws of the commonwealth to exercise; they may choose a secretary, superintendent, and such subordinate officers as they may deem expedient, and shall define their duties, and fix their respective salaries.

School committee to present estimate of expenses of the public schools to auditor, etc.
Ibid.

SECT. 2. The school committee shall present to the auditor, on or before the first day of February in each year, an estimate in writing of the expenses of the public schools for the next financial year, stating the amount required for salaries, for incidental expenses, and for the alteration, repairs, and erection of school-houses.

To apportion salaries of instructors.
Ibid.

SECT. 3. Said committee shall not fix the salaries of the teachers in the public schools at such rates that the aggregate amount of all said salaries shall, in any financial year, exceed the sum named for that purpose in their estimate.

¹ An ordinance relating to public schools, passed December 18, 1855.

TRUANTS.¹

SECT. 4. The house for the employment and reformation of juvenile offenders is hereby assigned as a suitable place for the confinement and discipline and instruction of habitual truants and children between the ages of seven and fifteen years, who may be found wandering in the streets or public places of the city, having no known occupation or business, not attending school and growing up in ignorance.

Habitual truants to be sent to House of Reformation.
Nov. 29, 1876.

SECOND-HAND ARTICLES, JUNK, AND OLD METALS.

STATUTES.

1. The mayor and aldermen or selectmen of any city or town, which has adopted by-laws therefor, may license suitable persons to be dealers in and keepers of shops for the purchase, sale or barter of junk, old metals, or second-hand articles, within their respective cities and towns.

Licenses to deal in old, etc., articles.
G. S. c. 88, § 25.

2. The license shall designate the place where the business is to be carried on, and contain such conditions and restrictions as may be prescribed by such by-laws, and shall continue in force for one year, unless sooner revoked.

License to designate place of dealing, etc.
Ibid. § 26.

3. Whoever, not so licensed, keeps a shop or is a dealer in such city or town, or, being licensed, keeps such shop, or is such dealer, in any other place or manner than that designated in his license, or after notice to him that his license has been revoked, shall pay a fine of twenty dollars for each offence.

Penalty for dealing without, etc.
Ibid. § 27.

4. Licenses granted as aforesaid shall be signed by the clerk of the city or town in which they are granted, and every such license shall be recorded by such clerk in a book kept for that pur-

Licenses to be signed by city clerk.

¹ An ordinance in relation to truant children and absentees from school, passed Nov. 29, 1876. Approved by Judge Colburn of the Superior Court, November 29, 1876.

To set forth
name of person,
nature of busi-
ness, etc.
1876, c. 147, § 1.

pose before being delivered to the licensee; such license shall set forth the name of the person licensed, the nature of the business, and the building or place in such city or town in which it is to be carried on, and shall continue in force until the first day of May next ensuing, unless sooner revoked, as provided in section two.

Fee for license.

The clerk issuing any such license shall be entitled to receive for the use of the city or town for each license the sum of two dollars.

Licenses to ex-
pire on first day
of May.

Ibid. § 2.

5. Such licenses may be granted at any time during the month of April, to take effect on the first day of May then next ensuing, and after the first day of May they may be granted for the remainder of the year ending on the first day of the following May.

Business to be
conducted at
place designated
in license.
Ibid. § 3.

6. No license issued as aforesaid shall be valid to protect the licensee in any building or place other than that designated in the license, unless consent to removal be granted by the mayor and aldermen or selectmen.

Revocation of
license.
Ibid. § 4.

7. Whenever any such license shall be revoked the clerk of such city or town shall note such revocation upon the face of the record of the license, and shall give written notice of such revocation to the holder of the license, said notice to be delivered to him in person or left at the place of business designated in the license.

Cities, etc., may
make ordi-
nances regulat-
ing the pur-
chase and sale
of second-hand
articles.
1862, c. 205, § 1.

8. Every city and town may provide, by ordinance or by-law, that every keeper of a shop for the purchase, sale, or barter of junk, old metals, or second-hand articles within their respective limits, shall keep a book, in which shall be written, at the time of every purchase of any such article, a description of the article or articles purchased, the name, age and residence of the person from whom, and the day and hour when, such purchase was made; that such book shall at all times be open to the inspection of the mayor and aldermen of the city, or the selectmen of the town, in which such shop is located, and to any person by them respectively authorized to make such inspection; that every keeper of such shop shall put, in some suitable and conspicuous place on his shop, a sign, having his name and occupation legibly inscribed thereon in large letters; that such shops, and all articles of merchandise therein, may be examined by the mayor and aldermen of any city, or the selectmen of any town, or by any person by them respectively authorized to make such examination, at all times; and that no keeper of such shop shall, directly or indirectly, either purchase

or receive, by way of barter or exchange, any of the articles aforesaid, of any minor or apprentice, knowing or having reason to believe him to be such; and that no article purchased or received shall be sold until a period of at least one week from the date of its purchase or receipt shall have elapsed. Every city and town may also prescribe, in like manner, the hours in which such shops shall be closed, and that no keeper thereof shall make purchase of any of the articles aforesaid during such hours.

9. Every rule, regulation, and restriction which shall be made by any city or town, in accordance with the provisions of this act, in regard to the keeping of, and traffic in, the articles aforesaid, shall be incorporated in every license granted in such city or town for dealing in the said articles.

Conditions of the traffic in second-hand articles to be incorporated in license.
Ibid. § 2.

10. Any person who shall violate either of the rules, regulations, or restrictions contained in his license, as aforesaid, shall forfeit a sum not exceeding twenty dollars for each offence.

Penalty for violations of ordinance.
Ibid. § 3.

ORDINANCE.¹

SECTION 1. No person shall be a dealer in, or keeper of a shop for the purchase, sale, or barter, of junk, old metals, or second-hand articles, in this city, unless he is duly licensed therefor by the board of aldermen.

No person shall deal in second-hand articles, junk, etc. without license.
Aug. 12, 1862.

SECT. 2. Every person dealing in said articles, or keeping such a shop, shall keep a book, in which he shall record, at the time of every purchase by him of either of the articles mentioned in the preceding section, a description of the article so purchased, the name, age, and residence of the person from whom, and the day and hour when, he so received it; and that book shall, at all times, be open to the inspection of the mayor, or either of the aldermen,

Dealers shall keep a record of purchase, etc.
Ibid.

¹ An ordinance concerning dealers in junk and second-hand articles, passed August 12, 1862, and amended December 6, 1862.

Aug. 12, 1862. or of any person by said board of aldermen authorized to make such examination.

No purchase to be made of minor, etc., and no sale within one week, except, etc.

Ibid.
Dec. 6, 1862.
See § 9.

SECT. 3. No keeper of such shop shall, directly or indirectly, either purchase or receive, by way of barter or exchange, any of the articles aforesaid of any minor or apprentice, knowing or having reason to believe him to be such; and no article purchased by such shopkeeper shall be sold by him until a period of at least one week from its purchase or receipt by him shall have elapsed, without entering on his book the name and address of the purchaser, with other proofs sufficient to enable him to keep trace thereof.

Keeper of shop to have a sign, etc.
Aug. 12, 1862.

SECT. 4. Every keeper of such shop shall put in some suitable and conspicuous place on his shop a sign, having his name and occupation legibly inscribed thereon, in large letters.

All articles to be open to examination, etc.
Ibid.

SECT. 5. Every such shop, and all articles of merchandise therein, may be examined at any time by the mayor, or either of the aldermen, or by any person by the board of aldermen authorized to make such examination.

Time when shop may be kept open.
Ibid.
Dec. 6, 1862.

SECT. 6. No keeper of such shop shall have the same open for the transaction of business, except during the time between the rising of the sun and nine o'clock in the afternoon each week-day, except Saturday, when said shop may be kept open until ten o'clock in the evening.

SECT. 7. All licenses granted under this ordinance shall designate the place where the person licensed may carry on his business; and he shall not engage in, or carry on, his business under his license in any other place than the one so designated.

License to designate place of business.
Aug. 12, 1862.

SECT. 8. Any person offending against either of the provisions of this ordinance shall forfeit a sum not exceeding twenty dollars for each offence.

Penalties.
Ibid.

SECT. 9. Persons who buy or sell no second-hand articles, except books or furniture, shall be exempt from the provisions and conditions of section three.

Sellers of books and furniture exempt
Ibid.

SECT. 10. All the provisions of this ordinance shall be incorporated into every license granted under it.¹

License to contain provisions of ordinance.
Ibid.

SEWERS AND DRAINS.

GENERAL STATUTES.

1. The mayor and aldermen of any city, and the selectmen of any town, may lay, make, and maintain all such main drains, or common sewers, as they shall adjudge to be necessary for the public convenience or the public health, through the lands of any persons or corporations, and may repair the same from time to time, whenever repair thereof shall be necessary; and all main drains and common sewers so laid shall be the property of the city or town laying the same.

Cities and towns may make and maintain drains and common sewers.
1869, c. 111, § 1.
17 Howard
(U. S.), 426.
19 Howard, 265.
24 Howard, 193.
4 Allen, 41.
8 Allen, 127.
104 Mass. 13.
110 Mass. 216.
114 Mass. 483.

¹ For rules of the board of aldermen providing for the appointment of a superintendent of pawnbrokers and dealers in second-hand articles, see "Pawnbrokers," p. 593.

Lands to be taken as in laying out streets and highways. 1869, c. 111, § 2.

Damages to be determined as in laying out streets and highways. Ibid. § 3. 11 Gray, 345. See note.

Persons entering drains into main drain to be assessed, etc. G. S. c. 48, § 4. 9 Cush. 233. 99 Mass. 633. 113 Mass. 163.

2. When any lands or real estate shall be taken by virtue of this act, the proceedings in the several cities shall be the same, in all respects, as in the laying out of highways or streets in such cities respectively; and the proceedings in the several towns shall be the same in all respects as in the laying out of town ways.

3. All persons or corporations suffering damages¹ in their property by reason of the laying, making or maintaining of any main drains or common sewers shall have the same rights and remedies for ascertaining and recovering the amount of such damage, in the several cities, as in the case of the laying out of highways or streets in such cities respectively, and in the several towns, as in the case of laying out of town ways.²

4. Every person who enters his particular drain into such main drain or common sewer or who, by more remote means, receives benefit thereby, for draining his cellar or land, shall pay to the city or town a proportional part of the charge of making and repairing the same, to be ascertained, assessed, and certified by the mayor

¹ The exclusive control of the construction of common sewers in the city of Boston is vested in the board of aldermen; and the city is not liable for any injury or inconvenience occasioned to private persons by their location or construction according to the order of the board. 4 Allen, 41.

A city or town is not responsible in damages for the inconvenience and loss of business occasioned to the abutters on a street by opening an old common sewer in the street for the purpose of enlarging and repairing it. 19 Pick. 178.

No action lies against a city for the injury occasioned to land bounding on a public street from the accumulation of water on the surface of the street, which the city has neglected to drain. 13 Gray, 601.

No action lies against a city for a failure to keep a public sewer and cesspool in repair, whereby waste water accumulates and flows into the cellar of a neighboring house, which is not connected by a drain with the public sewer. 8 Allen, 127.

A city has no right to allow the discharge into tide waters, through a sewer which it has constructed, of mud and filth in such quantities as to create a nuisance; and if it obstructs the use of a private dock by such discharges, or makes it offensive, it is liable in damages and may be restrained by injunction. 108 Mass. 208. As to liability for polluting streams, see 110 Mass. 216.

² By the fourth section of this act (1869, c. 111), sections one, two, and three of chapter forty-eight, of the General Statutes, were repealed, except as to rights and obligations already accrued; the remaining sections of said chapter, so far as the same are applicable, apply to the laying out of sewers and drains under this act.

and aldermen or selectmen, and notice thereof shall be given to the party to be charged, or his tenant or lessee. G. S. c. 48, § 4

5. Assessments so made shall constitute a lien on the real estates assessed for one year after they are laid, and may, together with incidental costs and expenses, be levied by sale thereof, if the assessment is not paid within three months after a written demand for payment, made either upon the person assessed, or upon any person occupying the estate; such sale to be conducted in like manner as sales for the non-payment of taxes.¹

Such assessments to constitute a lien, and may, with costs and expenses, be collected by sale.
Ibid. § 5.
114 Mass. 544.

6. A person aggrieved by such assessment may, at any time within three months from receiving notice thereof, apply for a jury. Such application shall be made in like manner, and the proceedings thereon shall be the same, as in case of lands taken for laying out of highways: *provided*, that before making his application the party shall give one month's notice in writing to the selectmen or mayor and aldermen of his intention so to apply, and shall therein particularly specify his objections to the assessment made by them; to which specification he shall be confined upon the hearing by the jury.²

Party aggrieved may have jury.
Mode of proceeding.
Ibid. § 6.
6 Allen, 134.
See 1873, c. 261.
1874, c. 283.

7. Nothing herein contained shall prevent a city or town from providing, by ordinance or otherwise, that a part of the expense of constructing, maintaining, and repairing main drains or common sewers shall be paid by such city or town. And in the city of Boston, not less than one-quarter part of such expense shall be paid by the city, and shall not be charged upon those using the main drains or common sewers.

Part of expense may be paid by town, etc.
G. S. c. 48, § 6.

How in Boston.

8. Whoever digs or breaks up the ground in a highway, street or lane, in any town, for the laying, altering, or repairing of a drain or common sewer, without the consent of the selectmen in

Highways, etc., when may be dug up to lay drains, etc.

¹No action can be maintained to recover an assessment, made under Gen. Sts. c. 48, § 4, upon a person's entering his particular drain into a common sewer constructed by a city or town; but the only remedy in such case, is the enforcement of the lien given by § 5 of the statute. 114 Mass. 544.

²Under the Gen. Sts. c. 48, §§ 4, 6, the mayor and aldermen of a city may assess upon a person benefited by the making of a main drain, his proportional part of the expense thereof, without giving him notice and opportunity to be heard before the making of the drain. 111 Mass. 123.

As to the constitutionality and general effect of these provisions in relation to assessments, see 9 Cush. 233.

G. S. c. 48, § 8. writing, shall forfeit five dollars for each offence to the use of the town.

Drains, etc.,
how to be con-
structed.
Ibid. § 9. 9. All drains and common sewers in a street or highway shall be substantially made or repaired with brick or stone, or with such other materials, and in such manner, as the selectmen of the town shall permit or direct.

Persons bene-
fited to share
expense of mak-
ing drains, re-
pairing, etc.
Ibid. § 10. 10. When a person, by the consent and under the direction of the selectmen, at his own charge, makes and lays a common sewer or main drain for the benefit of himself and others who think fit to join therein, every person who afterwards enters his particular drain into the same, or by any more remote means receives benefit thereby for the draining of his cellar or land, shall pay to the owners of such common sewer or main drain a proportional part of the charge of making and repairing the same, to be determined by the selectmen of the town and certified under their hands; saving always to the party aggrieved by any such determination the right to a trial by jury, as provided in section six.

Persons bene-
fited by drains
to share expense
of removing ob-
structions, etc.
Ibid. § 11. 11. When a common sewer or main drain is stopped or gone to decay, so that it is necessary to open the same in order to repair it or to remove such stoppage, all persons benefited by such repair or removal of obstructions, as well those who do not as those who do cause such repairs to be made or obstruction to be removed, shall pay to the person incurring the expense their proportional parts thereof, to be determined as provided in the preceding section.

Those refusing
to pay their pro-
portions shall
pay double
amount, etc.
Ibid. § 12.
7 Cush. 277.
9 Cush. 233. 12. Every person so required to pay his proportional part of the expense of making or repairing a drain or common sewer shall have notice of the sum and of the person to whom the same is to be paid; and if he does not, within seven days after such notice, pay the same to the person authorized by the selectmen to receive it, he shall be held to pay double the amount certified by the selectmen as aforesaid, with all expenses arising upon such neglect; and the person so authorized by the selectmen may recover the same in an action of contract in his own name.

Notice to be
given before
opening any
drain.
G. S. c. 48, § 13. 13. Whoever has occasion to open a common sewer or main drain, in order to clear and repair the same, shall, seven days at least before he begins to open the same, give notice to all parties interested, by advertising, in such manner as the selectmen may

direct, that such parties may, if they think proper, object thereto and state their objections in person or in writing to the selectmen; and if the selectmen judge the objections reasonable, the parties making the same shall not be held to pay any part of such expenses; but if they do not make their objections to the selectmen within three days after such notice, or if the objections are not adjudged reasonable, the selectmen shall in writing, under their hands, give liberty to the persons applying to open such common sewer or main drain, and to clear and repair the same; and all persons interested therein shall pay their proportions, to be determined as provided in section ten.

G. S. c. 48, § 13.
See *ante*, § 10.

14. Nothing contained in this chapter [Gen. Sts. c. 48] shall affect any covenants or agreements among the proprietors of such drains or common sewers.

Agreements of owners not affected.
Ibid. § 14.

SPECIAL STATUTES.

15. The board of aldermen of the city of Boston may for the purposes of sewerage and drainage, take and divert the water of any streams or water-courses within the limits of said city, and devote the same to the purposes aforesaid; and may take all necessary land to widen, deepen or straighten the channel of such water-courses, and pave, enclose and cover the same.

Streams and water-courses may be diverted for drainage purpose.
1873, c. 205, § 1.

16. In taking said water-courses or lands for the purposes aforesaid, the said board of aldermen shall proceed in the manner required by law in cases where land is taken for highways; and persons suffering damage in their property shall have the same rights and remedies for the ascertainment and recovery of such damages as are provided by law for the ascertainment and recovery of damages for lands taken for highways.

Proceedings as in taking land for highways.
Ibid. § 2.
Damages.

17. The town of Brookline and the city of Boston may erect and maintain a dam, with a tide-gate therein, across Muddy river at its intersection with Brookline avenue, in Boston, near the street now or formerly called Appleton place, for the purpose of preventing the tide from flowing up said river. If the city of Boston shall refuse or neglect, after thirty days' notice, to unite with the town of Brookline in erecting said dam and tide-gate, the town of Brookline may erect and maintain the same at its own expense.

Brookline and Boston may erect and maintain a dam with tide-gate across Muddy river.
1872, c. 267, § 2.

Waters of river may be diverted so as to flow in a more direct line to Charles river.

1872, c. 267, § 3.

18. The town of Brookline and the city of Boston may divert the waters of Muddy river, above said dam, so as to make them flow in a more direct line to Charles river, through the lands of any person or corporation, as they shall adjudge to be necessary for the public convenience or the public health. If the city of Boston shall refuse or neglect, after thirty days' notice, to unite with the town of Brookline in diverting said waters, the town of Brookline may divert said waters where the same are exclusively within the limits of said town.

If waters are diverted, lands may be filled to new line of river.

Ibid. § 4.

Proceedings before erecting dam to be same as in case of laying out town ways.

Ibid. § 5.

19. In case said waters of Muddy river shall be diverted as aforesaid, the owners of lands bordering upon said river may fill up said lands and the ancient channel of Muddy river, to the borders of the new line of said river.

20. For any of the purposes of this act the land or real estate of any person or corporation may be taken, and the proceedings in erecting said dam and tide-gate, and in diverting Muddy river, shall be the same in all respects as in the laying out of town ways; and all persons or corporations suffering damage in their property by reason of the erection of said tide-gates and dam, or by the diversion of Muddy river, shall have the same rights and remedies for the ascertainment and recovery of the amount of such damages as in the case of laying out of town ways.¹

May conduct waters of Muddy river in a more direct line to Charles river

1873, c. 260, § 1.

21. The town of Brookline may make a new channel within its own territory to conduct the waters of Muddy river in a more direct line to Charles river, and for this purpose the real estate of any person may be taken. The proceedings shall be the same in all respects as in laying out of town ways; and all persons suffering damage in their property, by reason thereof, shall have the same rights and remedies for the ascertainment and recovery of such damages as in the case of the laying out of town ways.

Drains and sewers of Boston may be extended into the new channel.

Ibid. § 2.

22. Drains and sewers of the city of Boston now discharging into Muddy river above the point at which the boundary line between Boston and Brookline, running from Charles river southerly along the easterly line of St. Mary's street extended, strikes the present channel of Muddy river, may be extended by said city through any lands or ways in said city or town into the new

¹ Part of "an act to change the boundary line between Brookline and Boston and for sanitary purposes," being §§ 17, 18, 19, 20, of text.

channel provided for by this act, the cost of such extension to be reimbursed to said city by said town; and said city shall have the right to enter new drains or sewers through said lands or ways into the new channel to the same extent that it now has the right to enter the same into the present channel of Muddy river. 1873, c. 260, § 2.

23. The city of Boston, for the purpose of surface drainage, may remove obstructions in or over Stony brook and the tributaries thereof, so far as the said brook and tributaries flow within the limits of said city; may divert the water, and alter the course and deepen the channel thereof; and the more effectually to make said improvements, may take or purchase land, not exceeding four rods in width, on either side of the present channel of said brook and of its tributaries, or of any channel into which said waters may be diverted within the limits of said city. Said city shall, within sixty days from the time they shall take any of said lands, file in the office of the registry of deeds for the county of Suffolk a description of the land so taken, as certain as is required in a common conveyance of land, and a statement that the same are taken in pursuance of the provisions of this act; which statement shall be signed by the mayor of said city; and the title to all land so taken shall vest in said city. Boston may remove obstructions in Stony brook. 1874, c. 196, § 1. May take land on either side of channel. To file in registry of deeds a description of land taken.

24. Any person injured in his property by any of the acts done by said city; under the first section of this act, shall, upon application to the board of aldermen of said city, have compensation therefor, the amount thereof to be determined by said board of aldermen. And said board of aldermen shall finally adjudicate upon the question of damages, within thirty days after the filing of said application, unless the parties agree in writing to extend the time. In case damages are awarded, payment shall be made forthwith by said city. Damages to be awarded by board of aldermen. Ibid. § 2.

25. If the applicant is aggrieved, either by the estimate of his damages, or by a refusal or neglect within thirty days to estimate the same, he may, within three months from the expiration of said thirty days, or of the extended time as provided in the foregoing section, apply for a jury and have his damages assessed in the manner provided when land is taken in laying out highways. If the damages are increased by the jury, the damages and costs shall be paid by the city; otherwise the costs arising on such application shall be paid by the applicant. If applicant for damages is aggrieved, he may apply for a jury. Ibid. § 3.

Damages to be paid by city. Estates may be assessed for betterments. 1874, c. 196, § 4.

Assessments to constitute a lien on the real estate. Ibid. § 5.

Assessments may be apportioned if owner desires. Ibid. § 6.

Person aggrieved may petition for a jury. Ibid. § 7.

Brook in the city to be under control of the city. Ibid § 8.

Streams flowing into brook not to be restrained.

26. All the expenses of improving said brook and its tributaries, authorized by this act, including all damages paid under the preceding sections, shall be paid by said city. But the board of aldermen of said city may assess upon the estates bordering upon said brook, as the same now is or shall be after said improvement and its tributaries, the expenses incurred by them, in proportion to the benefit which they may adjudge said estates to have received by said improvements.

27. All assessments made under the foregoing section shall constitute a lien on the real estate assessed for one year after they are laid, and may, together with all incidental costs and expenses, be levied by sale thereof (except as provided in the next following section), if the assessment is not paid within three months after a written demand of payment, made either upon the person assessed, or upon any person then occupying the estate, or posted upon the premises; such sale to be conducted in like manner as sales for the non-payment of taxes.

28. If the owner of any estate, assessed as provided in the foregoing section, desires to have the amount of said assessment apportioned, he shall give notice thereof in writing to the board of aldermen, at any time before or within twenty days after a demand is made upon him for the payment thereof; and said board of aldermen shall thereupon apportion the said amount into three equal parts, which apportionment shall be certified to the assessors, and the assessors shall add one of said equal parts to the annual tax of said estate each year for the three years next ensuing.

29. Any person aggrieved by the assessment made under the fourth section of this act [§ 26 of this digest] may, within three months after a written demand for payment, as provided in the fifth section of this act [§ 27 of this digest], petition for a jury in the same manner as appeals are made when land is taken in laying out highways. If the assessment is not confirmed by the jury, the costs of the application shall be paid by the city; otherwise the same shall be paid by the applicant.

30. When the improvements authorized by this act shall have been completed, that part of Stony brook and its tributaries flowing within said city shall be and remain under the control of said city.

31. This act shall not be construed to authorize the said city to restrain or dam up any of the streams now flowing into Stony

brook or into the tributaries thereof. Neither shall it authorize any interference with the estate owned by the Boston Belting Company or its rights in said brook as to the use and purity of its waters.

1874, c. 196, § 9.

Boston belting company.

31. The city of Boston shall have authority, in addition to the powers now possessed by it, for the purpose of laying and maintaining a main sewer running southeasterly from the direction of Charles river, to build and maintain wharves, pumping works and reservoirs for said sewer, on the main land, at or near the mouth of Neponset river, thence to conduct said sewer by means of a siphon or tunnel under the bottom of the harbor, at or near the mouth of said river, to that part of the town of Quincy called Squantum; thence along or across said Squantum and the flats adjacent thereto, to Moon island. Said city shall also have authority to build and maintain a reservoir or reservoirs at Moon island, and other works essential to a proper and convenient discharge of the contents of said sewer. In any construction over tide-water said city shall be subject to the direction of the harbor commissioners in the manner pointed out in chapter four hundred and thirty-two of the acts of the year one thousand eight hundred and sixty-nine.

City of Boston may maintain a main sewer discharging at Moon Island. 1876, c. 136, § 1.

32. The city of Boston shall have authority to take such lands, buildings, wharves and structures as may be necessary to accomplish the objects of the preceding section; and all damages to private property, or for lands, buildings, wharves or structures taken under this act, shall be ascertained as prescribed in chapter forty-three of the General Statutes, and paid by the city of Boston.

May take lands, wharves, etc. Ibid. § 2.

33. The city of Boston and the town of Brookline may contract with each other for the use and support in common of the city sewer now constructed in Beacon street in Boston and leading into Charles river, and for the building by said town, at its sole expense, within the limits of said city, of a sewer about nine hundred feet in length from the town line to connect the town drains with such city sewer, and for the support, at the joint and equal expense of each, of the outlet of the sewer and the carrying the same out farther into Charles river, if necessary; they may also contract with each other for the building and support in common of a new covered channel for Muddy river, such new channel to run from Tremont street along the line of division between said city and town

Sewer may be used in common by Boston and Brookline by agreement. Ibid. § 3.

Covered channel for Muddy river.

1876, c. 136, § 3. and to empty into the present channel of Muddy river east of Aspinwall avenue; if it shall be necessary to take land for the purpose of carrying out the provisions of this section, said city and said town, each within its own territory, may take such land as may be necessary, and persons aggrieved by such taking shall have their damages ascertained and paid, and all the proceedings shall be conducted in conformity to the laws applicable to the laying out of town ways in said town, and highways in said city.

ORDINANCES.¹

Superintendent
of common sew-
ers to be chosen.
June 14, 1841.
July 23, 1869.
9 Cush. 233.

SECTION 1. There shall be chosen annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the city council, a superintendent of common sewers, who shall hold his office for one year from the first day of April of the year in which he is elected, or until he is removed, or a successor is appointed. He shall receive such compensation as the city council may determine, and may be removed at the pleasure of the city council; and in case said office shall, at any time, become vacant, it shall be filled in the manner above prescribed for the

¹ An ordinance in relation to common sewers and drains, passed June 14, 1841; an ordinance in addition thereto, passed March 7, 1844; ordinances to amend, passed December 26, 1855; December 31, 1862; July 23, 1869, and July 20, 1875.

The statute of 1841, c. 115 (Gen. Sts. c. 48), in relation to sewers and drains, is a valid statute; and the by-laws of the city of Boston, in relation to sewers and drains, passed June 14, 1841, and March 7, 1844, are in conformity with that statute, and valid; and owners of vacant lots on a street in which a common sewer has been laid in pursuance of such by-laws are properly assessed for their proportion of the cost thereof, as well as owners of lots built upon. 9 Cush. 233.

An order of the mayor and aldermen of Boston, directing a main drain to be laid, upon a petition setting forth that the safety and convenience of the city require such a drain, is a sufficient adjudication of the necessity thereof under the city by-laws. *Ib.*

unexpired term. On or before the tenth day of Jan- June 14, 1841.
 uary, annually, the said superintendent shall make a
 report to the city council, containing a statement of
 the expenditures, income, and business of his depart-
 ment during the preceding year, a schedule of the
 property belonging to the department, and such other
 information, or such suggestions, as he may deem
 expedient.

SECT. 2. The superintendent shall, under the di- To have super-
vision of com-
mon sewers.
Ibid.
 rection of the board of aldermen, take the general
 supervision of all common sewers, which now are, or
 hereafter may be, built and owned by the city, or
 which may be permitted to be built or opened by its
 authority; and he shall take charge of the building
 and repairs of the same, and make all contracts for
 the supply of labor and materials therefor.

SECT. 3. All common sewers which may be con- Common sewers
to be laid near
centre of street.
Manner of con-
struction.
Ibid.
 sidered necessary by the board of aldermen, in any
 street or highway, shall be laid, as nearly as possible,
 in the centre of such street or highway, and shall be
 built of such materials, and of such dimensions, as the
 said board shall direct. And where it is practicable
 and advisable, they shall be of a sufficient size to be Size.
 entered and cleaned without disturbing the pavement
 above.

SECT. 4. The superintendent, whenever any com- Superintendent
to ascertain and
enter in a book
the dimensions,
etc., of sewers
to be built.
 mon sewer is ordered to be built or repaired, shall
 ascertain its depth, breadth, mode of construction and

June 14, 1841.

general direction, and take the plan¹ thereof, and insert the same, with all those particulars, in a book, to be kept for that purpose, and forthwith ascertain and insert on said plan all entries made into such sewer.

Superintendent
to keep account
of expense of
each sewer, and
report to board
of aldermen, etc.
Ibid.

SECT. 5. He shall keep an accurate account of the expense of constructing and repairing each common sewer, and shall report the same to the board of aldermen, together with a list of the persons and estates deriving benefit therefrom, and an estimate of the value of the lands, upon which said expense ought to be assessed, exclusive of any buildings or improvements thereon.

Board of aldermen, in making assessments, to deduct not less than one-quarter of the expense.
March 7, 1844.
7 Cush. 277.
See p. 701, § 7.
Manner of assessment.

SECT. 6. The board of aldermen, in making assessments for defraying the expense of constructing or repairing common sewers, pursuant to the provisions of this ordinance, shall deduct therefrom such part, not less than one quarter, as they may deem expedient, to be charged to and paid by the city; and they shall assess the remainder thereof upon the persons and estates deriving benefit from such common sewer, either by the entry of their particular drains, or by any more remote means; apportioning the assessment according to the area of the lands thus benefited; and they shall also fix the time when the

¹ In all plans made for the city in reference to the subject of grading streets, drainage, etc., relative heights are expressed by figures, low water being at zero. The coping of the dry dock at the navy-yard, Charlestown, is *fifteen* feet above; and the grade of the water-power company's and commonwealth's land at the intersection of streets is *eighteen* feet above. Ordinary high water is *ten*, but it is not very uncommon for spring tides, moved by strong easterly winds, to rise to *fourteen*.

proportion of the said assessments, charged upon persons benefited, shall be paid.¹

March 7, 1844.
July 20, 1875.

SECT. 7. The superintendent shall enter in books, kept for that purpose, all such assessments made by the board of aldermen, and shall forthwith make out bills for the same, and deliver them to the city treasurer for collection; and the city treasurer shall forthwith demand payment in writing of the said bills, in the manner prescribed by law; and if any bills or dues under this ordinance remain unpaid at the expiration of three months after demand for payment as aforesaid, the city treasurer shall cause the same to be collected by the proper legal process.

Manner of entering, demanding, and collecting assessments.
June 14, 1841.

SECT. 8. The board of aldermen shall have power, in all cases where there is any common sewer in any street or highway, to cause every owner of land, adjoining such street or highway, his agent or tenant, to make a sufficient drain from his house, yard, or lot, whenever, in their opinion, the same may be necessary, and they shall thereupon give such owner, agent, or tenant, notice in writing, specifying the time within which such drain must be completed; and if the said owner, agent, or tenant neglects to complete the same within the time specified, the board of aldermen shall cause it to be done, and shall recover the whole amount of the expense thereof, together with

Board of aldermen may compel owners of land to make drains.
Ibid.

May make same at owners' expense, in case of neglect.

¹ The provisions of this by-law are valid. And it is no objection to the validity of an assessment, made pursuant to such by-law, that the greater part of one lot assessed is lower than the bottom of the sewer. 7 Cush. 277.

June 14, 1841.

ten per cent. damages, by an action in the name of the city of Boston, before any court proper to try the same: *provided, however*, that in no case shall the ten per cent. claimed by way of damage exceed the sum of twenty dollars.

Rain-water from roofs may be carried into common sewers. Ibid.

SECT. 9. It shall be lawful for all persons, having the care of any buildings, to carry the rain-water from the roofs of said buildings at their own expense, into any common sewers, free of any charge from the city: *provided*, that the same be done by tight water spouts and tubes under ground, and under the direction of the board of aldermen.

Penalty for entering drain into common sewer without permit. Ibid.

SECT. 10. Every person entering his or her particular drain into any common sewer, without a permit in writing from the board of aldermen, or superintendent of common sewers, as hereinafter mentioned, shall forfeit and pay the sum of twenty dollars, and shall also be liable to pay all such damage, by way of indemnification, as the said board may deem just and reasonable.

Drains entering common sewer, how to be built, etc. Dec. 31, 1862. July 23, 1863.

SECT. 11. All particular drains, which enter into any common sewer in any street or highway, shall be built of such size and materials, and in such a direction, and at such grade, and in such a manner as the board of aldermen, or the superintendent of sewers, shall direct; and all openings into such common sewer for the purpose of connecting a drain therewith, and all drains and repairs of drains from any house, cellar, yard, or other premises connecting

with such common sewer,¹ and all openings or excavations in any street or highway, for the purpose of constructing or repairing any private drains, shall be made by a person licensed in writing for that purpose by the standing committee on sewers, or the superintendent of sewers, authorized so to do by said committee.

Dec. 31, 1862.
July 23, 1869.

License.

SECT. 12. Every person licensed as provided in the preceding section shall, before performing any work authorized thereby, execute a bond to the city, in such sum as the committee on sewers may prescribe, with one or more persons as sureties satisfactory to the committee on sewers or the superintendent of sewers, conditioned that he will properly make the openings into the sewer; that he will properly construct or repair the drains connecting with the sewer or any other drain; that he will leave no obstruction of any description in the sewer which he may open; that he will properly close up the excavation and restore the earth and pavement taken up, and regrade and repave the street, should it settle or become out of order within one year thereafter; or if he fail to do so within twenty-four hours after being notified thereof in writing, then it shall be regraded or repaved at his expense, by direction of the superintendent of sewers; also, that he will cause a sufficient fence to be placed and fixed so as to enclose the excavation, and the earth, stone, or other material which may be put into

Person licensed
to give bond to
the city.
Ibid.

Conditions.

¹ For provisions relating to the connection of vaults with drains or sewers, see "Health," *ante*, p. 417.

Dec 31, 1862.
July 23, 1869.

the street, and that he will maintain such fence during the whole time such excavation, earth, or other material may obstruct the street; and that he will cause one or more lighted lanterns to be maintained in a conspicuous place over such excavation, earth, or fence, from the beginning of twilight every evening, and through every night during the time such excavation or obstruction in the street may exist; and further, that he will comply with the ordinances in relation to sewers, and drains, and streets, and to such orders and regulations as the board of aldermen may adopt for the proper government of persons licensed to construct or repair private drains or open and dig in the street or highway for that purpose; and that he will indemnify and hold harmless the city from any damage or costs to which they may be put by reason of injuries resulting to any one from neglect or carelessness in making and repairing such drain, or in performing any work connected therewith, or in properly fencing or lighting at night any excavation or obstruction caused by making or repairing such drain.

Penalty for constructing, etc.,
drain without permission, etc.
Ibid.

SECT. 13. If any drain in any street or highway be constructed or repaired, or any excavation be made for that purpose, without the permission authorized in section eleven, or in a mode different from that prescribed therein, the person doing such work, and the owner or agent directing the same, shall respectively be liable to a penalty not exceeding twenty dollars.

SECT. 14. No owner or owners of any real estate to whom permission has been or shall be given to construct private drains for such estate shall, by the construction of such private drains, be exempted from an assessment lawfully imposed for constructing common sewers in the same vicinity.

Permission not to exempt from assessment.
Dec. 31, 1862.

SECT. 15. Whenever any drain connecting with any common sewer or drain becomes clogged, obstructed, broken, out of order, or detrimental to the use of the sewer or other drain, or unfit for the purposes of drainage, the owner, agent, occupant, or person having charge of any building, yard, lot of land, or other premises which are drained by said drain, shall, when directed by the board of aldermen, within five days after notice in writing from said board remove, reconstruct, alter, cleanse, or repair said drain, as the condition of said drain may require.

Drains to be cleansed, repaired, etc.
Ibid.

In case of neglect or refusal to remove, reconstruct, repair, alter, or cleanse said drain for the space of five days, the board of aldermen shall cause the same to be removed, reconstructed, repaired, altered, or cleansed, as they may deem expedient, at the expense of the owner, agent, occupant, or other person, as aforesaid, and such owner, agent, occupant, or other person shall also be liable to a penalty not exceeding fifty dollars.

Penalty for not cleansing drains, etc.

SECT. 16. Any owner, agent, occupant, or other person having charge of any building, yard, lot of land, or other premises which are drained into any common sewer or drain, who permits any gravel, sand,

Penalty for permitting obstruction to sewer or drain.
Ibid.

Dec. 31, 1862.

ashes, or any substance or matter which may form a deposit or obstruction in any common sewer or drain, to flow or pass into the same, shall be liable to a penalty of not more than twenty dollars for each offence.

Obstructions,
how removed,
and prevented.

And said owner, agent, occupant, or other person as aforesaid shall, when directed by the board of aldermen, within ten days after notice in writing to that effect from said board, provide his drain with a sufficient cesspool or catch-basin, or, if one already exist, clean out, repair, or alter the same, and provide such other means as shall prevent any substance or matter from passing into the sewer or drain which may cause a deposit or obstruction therein.

Proceedings if
owner neglects
to provide cess-
pool, etc.

In case of neglect or refusal to provide a cesspool or catch-basin, or to clean out, repair, or alter such cesspool or catch-basin, if one exist, for the space of five days, the board of aldermen shall cause to be constructed a suitable and sufficient cesspool or catch-basin, or, if one exists, shall cause it to be repaired, altered and cleaned, and provided with such other means to prevent any substance or matter from passing into the sewer or drain that may cause a deposit or obstruction therein, as they may deem expedient, at the expense of the owner, agent, occupant, or other person having charge of the premises, and such owner, agent, occupant, or other person, shall also be liable to a penalty not exceeding twenty dollars.

Penalty for not
cleaning, etc.,
cesspool.

SOLICITOR.

STATUTE.

In all prosecutions before a police court or justice of the peace under the by-laws of a city or town, the city solicitor, or other person appointed by the board of aldermen, or selectmen of such city or town, may enter a *nolle prosequi*, or do any other matter or thing which may be done by a district-attorney in a criminal prosecution.

City solicitors in prosecutions upon city by-laws shall have the powers of district attorney.
G.S. c. 172, § 20.
108 Mass. 208.

ORDINANCES.¹

SECTION 1. On the first Monday of February, annually, or within sixty days thereafter, there shall be elected, by concurrent vote of both branches of the city council, a solicitor for the city of Boston, who shall be a resident citizen thereof, and be a counsellor at law of the courts of the commonwealth; and who shall not hold any other office under the city government during the period for which he is elected. He shall hold his office for one year from the first Monday of April in the year in which he may be elected, unless sooner removed; and he may be removed at the pleasure of the city council; and vacancies may be filled at any time for an unexpired term.

Solicitor, how chosen.
April 2, 1866.

SECT. 2. On the first Monday of February, annually, or within sixty days thereafter, the mayor shall nominate, and, by and with the advice and consent

Assistant solicitors, how appointed.

¹ An ordinance relating to the law department, passed April 2, 1866; amended, April 11, 1868; April 29, 1873; February 13, 1875. Order of city council approved May 21, 1869.

April 2, 1866.
 April 11, 1868.
 April 29, 1873.
 Feb. 13, 1875.

of the committee on ordinances, appoint four assistant city solicitors for the city of Boston, whose positions relative to each other shall be defined at the time of appointment. Said assistants shall be resident citizens of Boston, and counsellors at law of the courts of the commonwealth, and shall not hold any other office under the city government during the period for which they are appointed. They shall hold their offices for one year from the first Monday in April in the year in which they may be appointed, unless sooner removed; and they may be removed at the pleasure of the mayor, and vacancies may be filled at any time for an unexpired term in the same manner as the original appointments.

Duties of city
 solicitor.
 April 2, 1866.

SECT. 3. It shall be the duty of the city solicitor, when so requested, to furnish legal opinions on any subject or question submitted to him by the mayor, the board of aldermen, the common council, any joint committee, or any committee of either branch of the city council, any board elected by the city council, or by any officer of the city government who may need advice in regard to the discharge of his official duties.

Duties of assist-
 ant solicitors.
 April 2, 1866.
 April 11, 1868.

SECT. 4. It shall be the duty of the assistant city solicitors to examine all titles to property, to draft all bonds, deeds, obligations, contracts, leases, conveyances, agreements, and other legal instruments of whatever nature, which may be required by any ordinance or order of the city council, or either branch thereof, or by any committee of the city

council, or either branch thereof, or by any board elected by the city council, or which may be requisite to be done and made by the city of Boston; or which, by law, usage or agreement, the city may be at the expense of drawing.

SECT. 5. It shall be the duty of the city solicitor and assistant solicitors to commence and prosecute all actions and suits begun by the city, and to defend all actions and suits brought against the city, in any court or other tribunal in this commonwealth; also to appear as counsel in any other action, suit or prosecution which may involve the rights and interests of the city, and to defend any of the officers of the city in suits and prosecutions against them for any official action, or the performance of any official duty, when any estate, right, privilege, ordinance, act, or direction of the city government may be brought in question.¹ And the said solicitor and assistant solicitors shall also appear as counsel before the legislature of the commonwealth, or any committee thereof, whenever the interest and welfare of the city may be directly or incidentally affected; and they shall perform all other professional duties incident to the office which may be required of them by the mayor, the city council, or either branch thereof, or by any joint or separate committee thereof.

SECT. 6. In all duties imposed by this ordinance upon the assistant solicitors, they shall be subject to the direction and control of the city solicitor; and

April 2, 1866.
April 11, 1868.

Duties of solicitors.
April 2, 1866.
April 11, 1868.
15 Gray, 103.

Assistants to be subject to the city solicitor.
Ibid.

¹ See, also, ordinance relating to "Claims," *ante*, p. 200.

April 2, 1866.
April 11, 1868.

the assistant solicitors shall at all times be entitled to the advice and direction of the solicitor regarding the discharge of their duties; and the solicitor may at any time take exclusive control of any matter provided to be done by the assistant solicitors.

To occupy the
office provided
by the city.
Ibid.

To keep books
and records.

SECT. 7. The city solicitor, assistant solicitors, and the clerk hereinafter mentioned, shall occupy the office or suite of rooms, provided for them by the city council, and which shall be called the city solicitor's office. It shall be furnished by the committee on ordinances with suitable dockets, letter books, books for entering abstracts of titles to property, and for recording the opinions of the solicitor, and such other books of registration and account as the committee on ordinances may from time to time prescribe, which books, together with all papers relating to the affairs of the city which shall come into the possession of the city solicitor or either of the assistant solicitors in his or their official capacity, shall remain the property of the city of Boston. All papers and documents in said office, belonging to the city, shall be kept in proper files with suitable indices. The committee on ordinances may, from time to time, determine the manner in which the dockets, the books containing abstracts of titles to property, and the opinions of the city solicitor, and any other books of registration and account which they may prescribe, shall be kept.

Solicitor to
make semi-an-
nual reports.

SECT. 8. In the months of June and December of each year, the city solicitor shall make a report, in

writing, to the city council, of all suits or legal proceedings in which the city of Boston has any interest, begun, pending, or determined during the six months next preceding the time of making said report; and in such report shall state the names of the parties, the causes of action, the date when each suit or proceeding was begun, and before what court or tribunal, the amount of the judgment rendered, if any, and in whose favor, and the condition of all pending suits or proceedings, with such other information as may at any time be prescribed by the committee on ordinances.

April 2, 1866.

April 11, 1868.

SECT. 9. The city solicitor shall, annually, within thirty days after his election, appoint a clerk, a certificate of whose appointment he shall file in the office of the city clerk. The clerk shall hold his office for one year from the first Monday of April in the year in which he may be appointed, unless sooner removed; and he may be removed at the pleasure of the solicitor; and vacancies may be filled for an unexpired term in the same manner as the original appointment. The said clerk shall copy all papers which the solicitor or assistant solicitors may require to be copied, and shall, under the direction of the city solicitor and the assistant solicitors, keep all the books of the office, and perform such other duties as they may impose upon him. He shall receive such compensation as the city council may from time to time determine.

Solicitor's clerk.

Ibid.

SECT. 10. The city solicitor and assistant solicitors shall receive, in full compensation for all their ser-

Compensation
of said officers.

April 2, 1868.
April 11, 1868.

vices, such salaries as the city council may from time to time determine. Whenever, however, their attendance may be required out of the city, they shall be allowed their reasonable travelling expenses; and they shall be entitled to receive and retain, for their own use, the legal taxable costs which may be received of the adverse party, in suits and prosecutions, when the city may recover the same, according to the practice of courts, to be divided among them in the proportion of their respective salaries.

Appointment of
messenger.
May 21, 1869.

SECT. 11. The committee on ordinances are authorized to employ a messenger or errand boy for the office of the city solicitor, at such rate of compensation as they shall deem reasonable; the expense thereof to be charged to the appropriation for salaries.

Additional legal
assistance.
Feb. 13, 1875.

SECT. 12. Whenever in the opinion of the mayor such an emergency arises as to require that additional assistance should be furnished in the law department, the mayor may, with the approval of the committee on claims, provide such assistance for the time being as he may deem expedient; and the compensation therefor shall be established by the committee on claims.

STATE AID TO DISABLED SOLDIERS AND SAILORS.

STATUTES.

Aid to disabled
soldiers and
sailors.

1. The treasurers of cities and towns shall, under the direction of the city council, or selectmen thereof, pay monthly the sum of six dollars, from and after the first day of January, in the year eight-

1866, c. 172, § 1.

teen hundred and sixty-six, to any person having a residence in said city or town, who has served in the army or navy of the United States, as an officer or as an enlisted or drafted man, to the credit of the state of Massachusetts, between the nineteenth day of April, in the year eighteen hundred and sixty-one, and the first day of September, in the year eighteen hundred and sixty-five, and who is now residing within this state, and who is wholly or partially disabled by reason of wounds received in said service, or by sickness or disability contracted therein; or who, being at the time of his enlistment and now an inhabitant of this state, has served as aforesaid, to the credit of any other state, between the said nineteenth day of April and the eighteenth day of March in the year eighteen hundred and sixty-two, and who is wholly or partially disabled by reason of wounds received in said service, or by sickness or disability contracted therein: *provided*, that said person has an honorable discharge from said service by reason of wounds, or disability, or expiration of his term of service; or has been duly mustered out of said service, and does not receive aid from any other state, or from any other town, under the provisions of this act. 1866, c. 172, § 1.
Provisos.

No person shall be entitled to receive state aid under the provisions of this section, except upon satisfactory proof that the person so applying for aid is in the receipt of a pension from the United States; and the full amount of said aid shall only be paid to persons in the receipt of a pension equal to the full pension which is allowed to a person of the same rank or grade; and to every other person so applying for aid, a proportionate part of said aid shall be paid, to be determined by the proportion which the pension received by him bears to the full pension which is allowed to a person of the same rank or grade: *provided*, that the decease of a soldier who was or shall be in the receipt of a pension from the United States and of state aid, at the time of his death, shall not prevent his family from receiving state aid under this act; and *provided further*, that town and city authorities shall withhold the aid when, in their judgment, any person who is in receipt of a pension from the United States is not in necessitous circumstances, or sufficiently disabled to prevent him from pursuing his ordinary and usual vocation. Persons entitled to aid to be in receipt of U. S. pension.
1867, c. 136, § 1.
Provisos.
1870, c. 339, § 1.

Payments made
monthly.

1866, c. 172, § 2.

1868, c. 107, § 1.

2. The treasurers of cities and towns shall, under the direction of the city council, or selectmen thereof, pay monthly, to the widow, children, or widowed mother, being in necessitous circumstances (having a residence in said city or town, and now residing in this state), of any person upon whom they were dependent, who served in the army or navy of the United States as an officer, or as an enlisted or drafted man, to the credit of the state of Massachusetts, between the nineteenth day of April, in the year eighteen hundred and sixty-one, and the first day of September, in the year eighteen hundred and sixty-five, and was killed, or has died by reason of wounds or disease incurred in said service; or who, being at the time of his enlistment an inhabitant of this state, served as aforesaid to the credit of any other state between the said nineteenth day of April and the eighteenth day of March, in the year eighteen hundred and sixty-two, and was killed, or has died by reason of wounds or disease incurred in said service; or to the wife, children or widowed mother, being in necessitous circumstances (living or having a residence in said city or town, and now residing in this state), of any person upon whom they were dependent, who has served as aforesaid; who is wholly or partially disabled by reason of wounds received in said service, or by sickness or disability contracted therein, — the sum of four dollars: *provided*, that the whole amount paid to the said relatives of one officer, soldier, or sailor, shall not exceed eight dollars per month; and *provided*, that such wife, children, or widowed mother do not receive aid from any other state, or from any other town, under the provisions of this act.

Provisos.

Being dependent not to entitle to aid unless, etc.

1867, c. 136, § 2.

No person shall be entitled to receive aid under the provisions of this section, by reason of being dependent upon any person named or described in this section, unless the person upon whom he was dependent was killed, or has died by reason of wounds or disease incurred in the service described in said section, or is, or at the time of his death was, in the receipt of a pension from the United States, equal in amount to one-half the full pension which is allowed to a person of the same rank or grade: *provided, however*, that when any person who has heretofore received state aid is precluded therefrom by the provisions of this act, and the authorities of the cities or towns are satisfied that justice and necessity

Provisos.

require a continuance of the aid to prevent actual suffering, they are hereby authorized in such cases to continue the payment thereof; and upon reporting the facts in each specific case, and showing, by evidence satisfactory to the commissioners, the necessity of such payments, the sums so paid shall be reimbursed to such cities and towns out of the treasury of the commonwealth.

3. If a wounded or disabled officer, soldier, or sailor, receiving aid under the first section of this act, shall marry after the passage of this act, no aid shall be paid on account of his wife. If the widow of any officer, soldier, or sailor, receiving aid under the second section of this act, shall marry again, the aid shall be discontinued to her. No aid shall be paid on account of any children over fourteen years of age. If any person to whom the aid is paid shall be convicted of any criminal offence at common law, or under the statutes of this commonwealth, said aid shall be discontinued to said person, unless or until the municipal authorities shall, in their discretion, otherwise determine. Aid shall be paid only to persons having a residence in some city or town in this commonwealth.

To cease on marriage of widows.

1866, c. 172, § 3.
1867, c. 136, § 9.

4. If any city or town shall hereafter [April 28, 1876] pay any sum of money as state aid on account of and for the benefit of a child of a soldier, born after the death of the father in the service of the United States, there shall be allowed and paid out of the treasury of the commonwealth to said city or town, the same sum in reimbursement as it would be entitled to receive under existing statutes had said child been born before the death of the father.

State aid for child born after death of father.
1876, c. 219.

5. All aid furnished under the provisions of this act shall be solely for the benefit of the person for whom it is intended, and shall be paid to said person directly, or upon his or her order; and it shall not be subject to trustee process nor assigned. And no transfer of said aid heretofore made shall be recognized in settlement of the same.

To be paid directly to beneficiary.

1866, c. 172, § 4.

6. The auditor, the adjutant general, and the surgeon general of the commonwealth shall constitute a commission to decide upon all questions which may arise, in the payment of aid, between the municipal authorities and the persons claiming the aid; and in all cases their decision shall be final; but no appeal shall lie to the commission with regard to the aid provided for in section two.

Commission to decide disputes.
Ibid. § 5.

1867, c. 136, § 7.

To inspect re-
turns, etc.
1867, c. 136, § 4.

7. It shall be the duty of the commissioners constituted by the preceding section to inspect all such returns, and whenever it shall appear by the inspection thereof, or otherwise, that the amount paid by the treasurer of any city or town under the provisions of said chapter one hundred and seventy-two, or of this act, for any quarter or greater period of time, is at a rate which if continued for one year would exceed the proportion of fifty per cent. of the state tax of such city or town for the previous year, or if for any reason the amount so paid shall appear to be unreasonably large, it shall be the duty of said commissioners to make or cause to be made an examination of the persons or claims of persons to whom the same has been paid, and of the parties by whom said returns are made; and in all cases of any fraud, or neglect of duty, on the part of the persons making such returns, or of the authorities of any city or town granting aid, said commissioners shall deduct from the amount claimed by any city or town the amount paid to any person or persons, when in their judgment the same should not have been paid under the provisions of said chapter one hundred and seventy-two, and of this act, and shall certify the same to the treasurer and receiver-general, who shall reimburse to said city or town only the balance thus designated.

May reduce
claims.

May appoint ex-
aminers, etc.
Ibid. § 5.

8. Said commissioners may appoint, as occasion may require, one or more disinterested persons, not exceeding three in number, whose duty it shall be to make the examinations provided for in section seven, and make full returns of their doings to said commissioners. Such expenses as may be incurred in making said examination, including such reasonable compensation to the persons appointed under the provisions of this section for their services as shall be approved by the commissioners, and allowed by the governor and council, shall be paid out of the treasury of the commonwealth. No person shall be appointed to make such examinations in the county where he may reside.

Report to be
made to state
auditor.

1866, c. 172, § 6.
1867, c. 136, § 3.
1868, c. 115.

9. On or before the fifth day of January, in each year, there shall be deposited in the office of the auditor of the commonwealth, by each town and city raising and applying money as aforesaid, a full and particular report, setting forth the names of the officers, soldiers and sailors, for the aid of whom, and for the aid of whose families, money has been applied as aforesaid; the

name of the company and regiment, and the name of the vessels, ^{1866, c. 172, § 6.} in which such officers, soldiers and sailors respectively enlisted, and in which they last served; and the names and ages of the several persons for the aid of whom money has been applied as aforesaid; the relation such persons severally bear to such officers, soldiers, or sailors; the sum paid to each of such persons, and the time when the same were paid; and such report shall be sworn to by a majority of the selectmen of such town, or by the mayor and a majority of the aldermen of such city, and, after it has been examined and approved by said auditor, there shall be reimbursed annually to said city or town, from the treasury of the commonwealth, on or before the first day of December, in the year in which the report is made, the amount legally paid as aforesaid, in accordance with the provisions of this act; but none of the expenses attending the payment of said aid shall be reimbursed. The auditor of the commonwealth shall, before the first day of January in each year, furnish to the several cities and towns suitable blanks for the returns required by this section.

10. When applicants for aid have their residence in a city or town to which they are not credited, notice of their application shall be forthwith sent by such town to the place to which said applicants are credited; and if an answer to such notice, setting forth all the facts touching the application necessary to be known by the town to which application is made, is not sent by mail within seven days from the receipt of the same, the city or town in which such applicants reside may recover, in an action of contract against the town or city so neglecting to answer, all such sums as they may advance to such applicants, not reimbursed by the state.

Towns where parties reside to be notified.
Ibid. § 7.

11. Persons applying for aid under this act shall state, in writing, under oath, the age and residence of the party for whom such aid is claimed; the relation of the claimant to the party who rendered the service for which aid is claimed; the company and regiment or the vessel in which the officer, soldier, or sailor enlisted, and that in which he last served; the date and place of such enlistment when known; the duration of such service; and the reason upon which the claim for aid is founded. And it shall be the duty of the auditor to furnish from time to time, to each city and town, a sufficient

Facts in claim to be stated.
Ibid. § 9.

1866, c. 172, § 9. number of suitable blank forms for the use of applicants for aid under this act.

What relatives
may receive aid.
Ibid. § 10.

12. The provisions of this act shall apply to the wife, children, or widowed mother (having a residence in some city or town of this commonwealth, and now residing therein) of any person who served in the army or navy of the United States between the nineteenth day of April, eighteen hundred and sixty-one, and the first day of September, eighteen hundred and sixty-five, as an officer, or enlisted or drafted man, to the credit of the state of Massachusetts, and who appears on the rolls of his regiment or company, in the office of the adjutant general, to be missing, or to have been captured by the enemy, and who has not been exchanged, or has not returned from captivity, or who is not known to be alive: *provided*, that aid shall not be paid to the said relatives of such officer, soldier, or sailor, if the municipal authorities have good and sufficient reasons to believe that he deserted from the service, or that he is still living, and wilfully absent from his family, or if said relatives receive said aid from any other state, or from any other town, under the provisions of this act.

Cities may pay
sums to wife,
etc.
1867, c. 136, § 6.

13. The treasurers of cities and towns may, under the direction of the city council or selectmen thereof, pay the sums due for aid to any officer, soldier, or sailor; or so much thereof as they may think best to the wife or family of such officer, soldier, or sailor, or for the benefit of such wife or family; and the amounts so paid shall be reimbursed in the same manner as if paid to such officer, soldier, or sailor in person.

Towns may
raise money by
taxation.
1866, c. 172, § 11.

14. Any town or city may raise money by taxation or otherwise, and, if necessary, apply the same for the purposes set forth in this act; and all persons entitled to aid under the provisions of this act who do not apply for the same within three months from the passage hereof shall not receive said aid prior to the date of their application.

One hundred
days' and three
months' regi-
ments.
1867, c. 136, § 9.

15. All persons who served in the regiments commonly known as "one hundred days' regiments," and "three months' regiments," and who come within the provisions of this act, shall receive the aid herein provided.

State aid contin-
ued under 1870,
c. 339.

16. State aid may be continued to any person under chapter three hundred and thirty-nine of the acts of the year eighteen

hundred and seventy, who, being otherwise entitled thereto, was or shall be, at the time of making application therefor, a resident of the commonwealth. 1871, c. 230.
Sec § 1, p. 723.

17. The operation of chapter one hundred and seventy-two of the acts of the year eighteen hundred and sixty-six, and chapter one hundred and thirty-six of the acts of the year eighteen hundred and sixty-seven, so far as they provide for the payment of state aid to disabled soldiers and sailors and their families, and for the families of the slain, residing in this commonwealth, is hereby extended to the first day of January, in the year eighteen hundred and seventy-five: *provided*, that the decease of a soldier who was or shall be in the receipt of a pension from the United States, and of state aid at the time of his death, shall not prevent his family from receiving state aid under this act; and *provided, further*, that the city authorities shall withhold the aid, when, in their judgment, any person who is in receipt of a pension from the United States is not in necessitous circumstances, or sufficiently disabled to prevent him from pursuing his ordinary and usual vocation. Time extended for payment of state aid to disabled soldiers, etc., to January 1, 1875.
1872, c. 324.
Provisos.

18. Any city or town may raise money by taxation or otherwise, and, if necessary, apply the same, under the direction of its selectmen or city council, to aid disabled soldiers and sailors and their families, and families of the slain. Towns may raise money by taxation to aid disabled soldiers, etc.
Ibid. § 2.

19. By chapter three hundred and thirty of the acts of the year eighteen hundred and seventy-four the time for paying state aid was further extended to the first day of January, in the year *eighteen hundred and eighty*, with the provisos mentioned in section seventeen of the above. Time further extended to January 1, 1880.
1874, c. 330.

STAVES AND HOOPS.

STATUTES.

1. In every maritime place from which staves are usually exported, there shall be annually chosen two or more suitable persons to be viewers and cullers of staves and hoops, who shall be sworn. Cullers of hoops and staves to be chosen.
G. S. c. 49, § 84.

Quality and size
of staves.

G. S. c. 49, § 85.

2. White oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge and every part thereof; white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three-quarters of an inch thick on the heart or thinnest edge; white oak and red oak hogshead staves shall be at least forty-two inches long, and not less than half an inch thick on the heart or thinnest edge; white oak and red oak barrel staves for foreign market shall be thirty-two inches long, and for home use thirty inches long, and shall average half an inch thick on the heart or thinnest edge; white oak and red oak hogshead and barrel staves shall be at least four inches in breadth and none less than three inches in breadth in the narrowest part, and those of the breadth last mentioned shall be clear of sap; and all staves shall be well^a and proportionably split.

Of hogshead
hoops, their
length, size, etc.
Ibid. § 86.

3. Hogshead hoops that are exposed to sale or exported, shall be from ten to thirteen feet in length, of white oak or walnut, of good and sufficient substance, and well shaved; those of oak shall not be less than one inch broad at the least end, and those of walnut shall not be less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve, and thirteen feet respectively shall be made up in distinct bundles by themselves. If hoops of less dimensions than those prescribed by law are packed, or if a bundle contains less than thirty hoops, the bundle shall be forfeited, and may be seized by the culler of hoops, and libelled for the benefit of the place where it is offered for sale.

Fees for culling.
Ibid. § 87.

4. Cullers shall be allowed for their time and services fifty cents a thousand for hoops, twenty-eight cents a thousand for barrel staves, thirty-three cents a thousand for hogshead staves, forty cents a thousand for pipe staves, and forty-four cents a thousand for butt staves, as well refuse as merchantable; the merchantable to be paid for by the buyer, the refuse by the seller.

Penalty for
fraud in culling.
Ibid. § 88.

5. If a culler connives at, or is guilty of, fraud in culling staves or hoops, he shall forfeit fifty dollars for each offence; and if he refuses to perform service when requested shall forfeit five dollars.

STEAMBOATS.

STATUTE.

1. The mayor and aldermen or selectmen of any city or town may license any person to run a steamboat for the conveyance of passengers on lakes, ponds, and waters within this commonwealth, and not within the maritime jurisdiction of the United States.

Steamboats for conveyance of passengers may be licensed. 1876, c. 100, § 1.

2. No person shall run a steamboat for the conveyance of passengers as aforesaid, without having previously obtained a license therefor from the mayor and aldermen of the city or cities, and the selectmen of the town or towns, within whose limits such steamboat shall land or receive passengers.

Not to be run without a license. Ibid. § 2.

3. Such licenses shall be granted for a term not exceeding one year, and shall be recorded by the clerk of the city or town by which they are granted, who shall receive a fee of one dollar for every such license and record. Every such license shall set forth the name of the vessel and of the master and owner, the number of passengers such vessel shall be permitted to carry at any one time, and shall be posted in a conspicuous place thereon, and the number of passengers specified in such license shall in no case be exceeded.

Licenses for term not exceeding one year. Ibid. § 3.

To set forth number of passengers permitted to carry, etc.

4. Whoever violates any of the provisions of this act shall be punished by fine not exceeding fifty dollars for each offence.

Penalty. Ibid. § 4.

STEAM ENGINES, FURNACES AND BOILERS.

STATUTES.

1. No furnace for melting iron or making glass, and no stationary steam engine designed for use in any mill for planing or sawing boards or turning wood, or in which any other fuel than coal is used to create steam, shall be erected or put up to be used in any city or town by which the provisions relating thereto of chapter one hundred [and] ninety-seven of the statutes of eighteen

Steam engines and furnaces not to be used in certain cases without license. G. S. c. 88, § 33. 8 Gray, 195. 1 Allen, 137.

G. S. c. 88, § 33. hundred and forty-five¹ or chapter ninety-six of the statutes of eighteen hundred and forty-six respectively, have been adopted, or by which this and the seven following sections shall have been adopted, at a legal meeting of the city council of the city or the inhabitants of the town, called for that purpose, unless the mayor and aldermen or selectmen thereof have granted a license therefor, prescribing the place where the building in which such steam engine or furnace is to be used shall be erected, the materials and construction thereof, with such regulations as to the height of the flues and protection against fire as they deem necessary for the safety of the neighborhood. Such license may be granted on a written application, and shall be recorded in the records of the city or town.

Proviso.

Public notice of applications for license, etc.
Ibid. § 34.

2. Upon application for such license, the mayor and aldermen or selectmen shall assign a time and place for the consideration of the same, and cause at least fourteen days' public notice thereof to be given, at the expense of the applicant, in such manner as they may direct, in order that all persons interested may be heard thereon.

Municipal officers may regulate furnaces, steam engines, etc.
Ibid. § 35.
1 Allen, 137.

3. In any city or town by which chapter one hundred and ninety-seven of the statutes of eighteen hundred and forty-five has been adopted, or by which sections thirty-three to forty, inclusive (being sections one to eight, inclusive of this text); shall have been adopted at a legal meeting of the city council of the city or inhabitants of the town called for that purpose, the mayor and aldermen or selectmen, after due notice in writing to the owner of such steam engine or furnace, except for making glass, erected or in use therein before the time of such adoption, and a hearing of the matter, may adjudge the same to be dangerous or a nuisance to the neighborhood, and make and record an order prescribing such rules, restrictions, and alterations, as to the building in which the same is constructed or used, the construction and height of its smoke-flues, with such other regulations as they deem necessary for the safety of the neighborhood; and the city or town clerk shall deliver a copy of such order to a constable, who shall serve on the owner an attested copy thereof, and make return of his

May be adjudged a nuisance.

¹ Adopted by the city council of Boston, April 21, 1845.

doings thereon to said clerk within three days from the delivery thereof to him. G. S. c. 88, § 35.

4. The owner of a steam engine or furnace, who is aggrieved by such order, may apply to the superior court, or a justice thereof in vacation, for a jury; and the court or justice shall issue a warrant for a jury to be empanelled by the sheriff in like manner as is provided in chapter forty-three of the General Statutes, in regard to the laying out of highways. Such application shall be made within three days after the order is served upon the owner, and the jury shall be empanelled within fourteen days from the issuing of the warrant. Appeal, and proceedings thereon. Ibid. § 36. See 1873, c. 261.

5. The court or justice, on granting the application for a jury, may issue an injunction restraining the further use of such engine or furnace until the final determination of the application. Court may restrain use while appeal is pending. Ibid. § 37. 1 Allen, 137.

6. The jury may find a verdict either affirming or annulling the order in full, or making alterations therein; which verdict shall be returned by the sheriff to the next term of the court for acceptance, as in the case of highways, and when accepted shall take effect as an original order. Verdict of jury may affirm, etc. order. Acceptance of verdict. Ibid. § 38.

7. If the order is affirmed, costs shall be recovered by the city or town against the applicant; if it is annulled, damages and costs shall be recovered by the complainant against the city or town; and if it is altered, the court may render such judgment as to costs as to justice shall appertain. Recovery of costs. Ibid. § 39.

8. Any steam engine or furnace erected or used contrary to the provisions of the seven preceding sections shall be deemed a common nuisance. And the mayor and aldermen, or selectmen, shall have like authority to remove the same as is given to boards of health to remove nuisances by sections eight, nine, and ten, of chapter twenty-six of the General Statutes.¹ Engines, etc., when common, nuisances, etc. Ibid. § 40. See § 15.

9. The mayor and aldermen, or selectmen of any city or town, or any person by them authorized, may, after notice to the parties interested, examine any steam engine or steam boiler therein; and for that purpose may enter any house, shop or building; and if, upon such examination, it appears probable that the use of such engine or boiler is unsafe, they may issue a temporary order to Aldermen, etc., may examine steam engines etc., and prohibit use. Ibid. § 41.

¹ See "Health," *ante*, p. 378.

Use to be suspended.

G. S. c. 83, § 41.

suspend such use, and if, after giving the parties interested, so far as known, an opportunity to be heard, they adjudge such engine or boiler unsafe, or defective, or unfit to be used, they may pass a permanent order prohibiting the use thereof until it is rendered safe. If, after notice to the owner or person having charge thereof, such engine or boiler is used contrary to either of such orders, it shall be deemed a common nuisance, without any other proof thereof than its use.

Steam engine or boiler, when may be removed as nuisance.

Ibid. § 42.

10. The mayor and aldermen, and selectmen, shall have the same authority to abate and remove any steam engine or steam boiler erected or used contrary to the provisions of the preceding section, as boards of health have to remove nuisances, by sections eight, nine, and ten, of chapter twenty-six of the General Statutes.¹

Not to be made or used, etc., without safety-plugs.

Ibid. § 43.

10 Gray, 274.

11. No person shall manufacture, set up, use, or cause to be used, any steam boiler, unless it is provided with a fusible safety-plug made of lead or some other equally fusible material, and of a diameter of not less than one-half an inch; which plug shall be placed in the roof of the fire-box, when a fire-box is used, and in all cases, in a part of the boiler fully exposed to the action of the fire, and as near the top of the water line as any part of the fire-surface of the boiler; and for this purpose Ashcroft's "protected safety fusible plug" may be used.

Penalty for removing safety-plugs.

Ibid. § 44.

12. Whoever, without just and proper cause, removes from any boiler the safety-plug thereof, or substitutes therefor any material more capable of resisting the action of the fire than the plug so removed, shall be punished by a fine not exceeding one thousand dollars.

Penalty for making, etc., boilers without safety-plugs.

Ibid. § 45.

13. Whoever manufactures, sets up, knowingly uses, or causes to be used, for six consecutive days, a steam boiler unprovided with a safety fusible plug, as named in section eleven, shall be punished by fine not exceeding one thousand dollars.

Use within five hundred feet of dwelling-house or public building prohibited, unless licensed.

1862, c. 74, § 1.

14. No stationary engine, propelled by steam or other motive power, shall be hereafter erected or put up for use in any city or town, within five hundred feet of any dwelling-house or public building, unless a license therefor shall have been first granted in the manner provided in sections one, two, and three, in respect to

¹ See "Health," *ante*, p. 378.

licenses of steam engines, furnaces, and boilers; and such license ^{1862, c. 74, § 1.} shall be applied for, granted, and recorded, in manner as therein provided.

15. Any stationary engine hereafter erected, without such license, shall be deemed a common nuisance, and the mayor and aldermen, or selectmen, shall have like authority to remove the same as is given to them by section eight. ^{When so erected to be deemed common nuisance. Ibid. § 2.}

16. This act shall not be in force in any city or town until it has been adopted at a legal meeting of the city council of the city, or of the inhabitants of the town called for that purpose.¹ ^{Act void unless adopted by city. Ibid. § 3.}

STREETS.

STATUTES.

STREET COMMISSIONERS.

1. The qualified voters of the city of Boston shall, at the annual municipal election next after the passage of this act [1870, c. 337], be called upon to give in their votes for three able and discreet men, being inhabitants of said city, who shall constitute the board of street commissioners of said city; one of whom shall be chosen for the term of one year, one for the term of two years, and one for the term of three years from the first Monday of January in the year 1871, and until their successors are chosen and qualified; and at any subsequent annual election the qualified voters of the city shall choose one person, qualified, as aforesaid, to be a member of said board, to serve for the term of three years. ^{Board of street commissioners established. 1870, c. 337, § 1.}

2. Said street commissioners shall have all the powers now exercised by the board of aldermen, concerning the laying out, altering or discontinuing the streets and ways of said city,² and the powers now exercised by said board of aldermen in relation to the abatement of taxes. ^{To have powers of board of aldermen concerning laying out streets and abatement of taxes. Ibid. § 2.}

¹ Adopted by the city council, March 25, 1862.

² A board of aldermen in laying out a way do not act as agents of the city, and therefore cannot be restricted in their actions by any prior acts or covenants of the city. 102 Mass. 19.

To make estimates of cost of laying out streets.

1870, c. 337, § 3.

If estimate exceeds \$10,000 matter to be determined by city council.

Street commissioners to furnish estimates of cost of laying out, etc., streets, within sixty days.

To lay out, etc., streets when directed by two-thirds vote of each branch of city council.

1872, c. 322.

Compensation.

1870, c. 337, § 4.

Clerk to be appointed by commissioners and

3. Whenever said board of street commissioners shall adjudge that the public safety and convenience require that any street, lane or alley in the said city shall be laid out, altered or discontinued,¹ they shall make and record an estimate of the expense thereof; and if such estimate shall exceed the sum of ten thousand dollars, or if such estimate with the estimates of any previous alteration or discontinuance of any part of said street, lane or alley, during the municipal year, shall exceed the sum of ten thousand dollars, the order for such laying out, alteration or discontinuance, together with an estimate of the expense thereof, shall be sent to the city clerk, who shall forthwith lay the same before the city council for their concurrence or rejection; and such act shall not take effect or be in force until said city council shall concur therein, and whenever the city council shall request the board of street commissioners to furnish the estimated cost of laying out, altering or discontinuing any street, lane or alley in said city, said board shall furnish such estimates within sixty days thereafter; and whenever the city council shall adjudge that the public safety and convenience require that any street, lane or alley in the said city shall be laid out, altered or discontinued, and shall, by a two-thirds vote of the members of each branch thereof, direct the said board of street commissioners to lay out, alter or discontinue any such street, lane or alley, said board shall forthwith proceed so to lay out, alter or discontinue such street, lane or alley under the provisions of this act.

4. Said commissioners shall each receive an annual salary of not less than three thousand dollars, which shall be in full for their services, shall be fixed by the city council, and paid from the treasury of the city.

5. Said commissioners shall appoint a clerk of said board, removable at pleasure, who shall have charge of the records of said

¹ The appropriation of private property to the public use, one of the highest acts of sovereign power, should not be accomplished by ambiguous or uncertain language. The presumption is in favor of the land-owner, and any act of public authority interfering with his rights should be clear and intelligible. 14 Gray, 282. See 9 Allen, 203; 12 Cush. 254; 102 Mass. 19. The alteration of a way, *ipso facto*, and without any words of discontinuance operates to discontinue so much of the old way as is not included in the new location. 8 Allen, 21; 9 Gray, 186; 100 Mass. 159.

board, and perform such clerical and other duties as may be required of him; he shall be sworn to the faithful performance of the duties of said office, and shall receive such salary for his services as the city council may determine, which shall be paid from the treasury of said city.

6. Whenever a vacancy occurs in said board of street commissioners, the same shall be filled by a concurrent vote of the city council; and the person so elected shall hold the office until his successor at the next municipal election shall be chosen and qualified.

7. All surveys and plans required by said commissioners shall be furnished by the city surveyor, and he shall perform such other duties for said commissioners as they may require.

compensation
fixed by city
council.

1870, c. 337, § 5.

Vacancies in
board to be
filled by con-
current vote of city
council.

Ibid. § 6.

Surveys and
plans required
to be furnished
by city sur-
veyor.

Ibid. § 7.

AUTHORITY TO LAY OUT STREETS IN THE TOWN OF BOSTON.

8. Under the provisions of an act passed in seventeen hundred and ninety-nine, the selectmen were empowered, whenever, in their opinion, the safety and convenience of the inhabitants of Boston should require it, to lay out or widen any street, lane, or alley of Boston; and for that purpose to remove any building or buildings of what nature soever. And it was further provided that the owner or owners of such building should be entitled to receive compensation for the damages which he or they might sustain by such removal, which damages should be ascertained, determined, and recovered in the way and manner pointed out in the act entitled "An act directing the method of laying out highways." That act provided for an estimation of such damages by a committee of freeholders, appointed by the court of general sessions of the peace; with a privilege to any party aggrieved of applying to the court for a hearing before a jury, or new committee. By an additional act, passed March four, eighteen hundred and five, the selectmen were in like manner empowered to lay out any new street, or to widen any street, lane, or alley, and for that purpose to take any land that might be required for the same, and to remove any building or buildings of what nature soever; and that the same street, lane, and alley, being recorded in the town's books, should be thereby established as such; and that the owner or owners of the land or buildings

Laying out and
widening
streets.

1799, c. 31, § 3.

1821, c. 110, § 13.

1854, c. 448, § 33.

1870, c. 337.

Compensation
for buildings re-
moved.

1786, c. 67, re-
pealed by Re-
vised Statutes.

1804, c. 73.

Compensation
for land taken,
etc.

1804, c. 73.

11 Mass. 447.

Discontinuance
of streets, etc.

1816, c. 90, § 1.

1821, c. 110, § 13.

1854, c. 448, § 33.

1870, c. 337.

7 Cush. 254.

1804, c. 73.

Previous orders,
etc., of select-
men confirmed.

1816, c. 90, § 2.

1799, c. 31.

that should be so taken or removed, should receive such recompense for the damages sustained, as the party interested and the selectmen¹ should agree upon, to be paid by the town, or the individual person or persons for whose use such street, lane or alley should be laid out or widened, or as should be ordered by the justices of the court of general sessions of the peace, upon an inquiry into the same by a jury to be summoned for that purpose, who should be drawn out of the jury-box of the supreme judicial court of the town of Boston, by the selectmen of said town, upon the application of the sheriff of the county of Suffolk; and if, by accident or challenge, there should happen not to be a full jury, said officer was to fill the panel *de talibus circumstantibus*; or by a special committee, if the parties should agree thereto.²

9. By an act passed December thirteen, eighteen hundred and sixteen, the selectmen were empowered, whenever, in their opinion, the safety or convenience of the inhabitants of the said city should require it, to discontinue any street, lane, or alley of the said city, or to make any alteration in the same, in part or in whole; reserving, however, in all cases, to individuals who might sustain damage thereby, recompense for the same, to be ascertained and allowed in the same manner as provided in the preceding section.

10. All orders, votes, and determinations of the said selectmen of the town of Boston, had and passed previous to the act of eighteen hundred and sixteen, for the discontinuance of any street, lane, or alley of said town, or respecting any alteration in the same, in whole or in part, shall be held and considered as good and valid to all intents and purposes as if the said act of seventeen hundred and ninety-nine, chapter thirty-one, had explicitly vested said authority in the said selectmen; reserving always to indi-

¹ Under this provision the board of aldermen now have authority to settle damages for laying out, altering or discontinuing streets.

² The court of general sessions of the peace has since been abolished, and its general functions have been transferred to the superior court. (See Sts. 1782, c. 14; 1803, c. 154; 1807, cc. 11, 57; 1809, c. 18; 1811, cc. 81, 93; 1813, c. 197; 1818, c. 120; 1819, c. 139; 1820, c. 79; 1821, cc. 51, 109; Rev. Sts. c. 82; Sts. 1855, c. 449; 1859, c. 196; Gen. Sts. c. 114. The provisions for the recovery of damages have been modified by subsequent statutes, as stated in succeeding sections.

viduals recompense for damages sustained thereby, as provided in 1816, c. 90, § 2. the said act.

11. The act of eighteen hundred and sixteen required the selectmen to keep a record of all the streets, lanes and alleys, and of all votes and proceedings relative to the same; and copies thereof, certified by the clerk, shall be valid to all intents and purposes.

Record of streets.
1816, c. 90, § 3.
1821, c. 110, § 13.
1854, c. 448, § 33.
1870, c. 337.

WAYS IN SUFFOLK COUNTY.

12. By the forty-third chapter of the General Statutes, the authority to lay out, alter, and discontinue highways, and to assess damages therefor, is given to the county commissioners; with the right to any party aggrieved to apply for a jury; and the method of proceeding is prescribed in detail. The special provisions for ways in the county of Suffolk are contained in the six sections next following:¹—

13. The board of aldermen [now street commissioners] of the city of Boston shall, within said city, have similar powers and perform like duties as are exercised and performed by the commissioners of counties in respect to the laying out, altering, and discontinuing of ways, and ordering specific repairs thereon; and shall assess damages therefor, and award indemnity for damages sustained by reason of such laying out, alteration, discontinuance, or order for specific repairs, in like cases and in the same manner as commissioners are required to perform similar duties.

Powers of board of aldermen of Boston.
G. S. c. 43, § 77.
8 Pick. 218.
15 Pick. 198.
19 Pick. 174.
20 Pick. 159.
23 Pick. 425.
1 Met. 122.
2 Met. 220.
8 Met. 172.
1 Gray, 203.
102 Mass. 22.
106 Mass. 97.

14. Applications for laying out, altering, or discontinuing a way in said city may be made, and notice given, and proceedings had thereon, in such manner, and under such regulations, as shall be prescribed by any ordinance of the city for that purpose.

Applications for laying out, etc., ways, how made.
Ibid. § 78.

15. A party aggrieved by the doings of the board of aldermen [street commissioners], in the cases mentioned in the preceding sections, may apply for a jury by petition to the superior court, at any term thereof which shall be holden within one year after the passage of the order or proceeding upon which the application is

Parties may apply for jury to superior court.
View to be granted.

¹ Whether the authority of the board of aldermen to lay out and widen streets depends upon the Gen. Sts. c. 43, §§ 77, 79, or upon St. 1799, c. 31, § 3; St. 1804, c. 73, and St. 1821, c. 110, § 13; St. 1854, c. 448, § 53 (city charter), *quære*. The practice has been to proceed upon the latter statutes. See 2 Met. 220; 8 Pick. 218; 16 Pick. 442, 504; 5 Cush. 1.

G. S. c. 43, § 79. founded, or if the application be for the assessment of damages or
 20 Pick. 201. indemnity merely, then within one year after the final determination
 8 Cush. 543. of any suit wherein the legal effect of the proceedings of the board
 5 Gray, 31. of aldermen is drawn in question; and thereupon said court shall,
 12 Gray, 209. after due notice to the city, order a trial by jury to be had at the
 2 Allen, 254. bar of the court in the same manner in which other civil causes are
 3 Allen, 230, 538. there tried by the jury, and if either party request it the jury shall
 99 Mass. 236. view the place in question.
 106 Mass. 553.
 See § 21.

Party aggrieved 16. A party aggrieved by the doings of the commissioners in
 by estimation of the estimation of his damages, occasioned either by the laying out,
 damages by lay- locating anew, altering or discontinuing a highway, or by any
 ing out, etc., specific repairs ordered by the commissioners, or in the sum
 highways, may awarded him as indemnity therefor, may have a jury to determine
 have jury. the matter of his complaint upon written application to the com-
 1870, c. 75. missioners; unless he agrees with the parties adversely interested
 100 Mass. 159. to have the same determined by a committee, to be appointed
 See § 21, *post*. under the direction of the commissioners.

Commissioners 17. The county commissioners in Middlesex shall have and
 of Middlesex, exercise the same powers and duties in the towns of Revere and
 powers of, in Winthrop, in the county of Suffolk, in relation to highways and
 Suffolk. other ways, as they have and exercise in the several towns in the
 Warrant for county of Middlesex, and similar proceedings may be had for the
 jury, to whom assessment and award of damages and indemnity. But in case a
 directed. jury is applied for or committee agreed upon in any matter relating
 Return of ver- to a way, the warrant therefor shall be directed to the sheriff or his
 dict, etc. deputy, or to a coroner, of the county of Suffolk, and the proceed-
 G. S. c. 43, § 80. ings thereon shall be the same as are had upon such warrants in
 1872, c. 87. other counties. The verdict of such jury, as well as the report of
 1872, c. 91. such committee, shall be returned to the superior court.

Expense not to 18. No part of the expenses incurred by the laying out, widen-
 be borne by ing, alteration, discontinuance, building or repair of any highway,
 Suffolk. bridge or other way of travel in the city of Chelsea or the towns of
 1872, c. 91. Revere and Winthrop, shall be assessed upon the county of Suf-
 folk or the city of Boston.

FOOT-WAYS.

Towns and 19. Towns and cities by their proper officers may lay out foot-
 cities may lay ways for the use of the public in their respective towns and cities.
 out foot-ways.

All proceedings in reference to laying out and establishing such foot-ways, the acceptance thereof, and the assessment and award of damages sustained by any person in his property shall be in conformity with the provisions of law applicable to the laying out and establishing of town ways.

1874, c. 299.
108 Mass. 63, 196.

ASSESSMENT OF DAMAGES.

20. If damage shall be sustained by any persons in their property by the laying out, altering, or discontinuing a highway, the commissioners shall estimate the amount, and in their return state the share of each separately; but they shall not order such damages to be paid, nor shall a person claiming damage have right to demand the same, until the land over which the highway or alteration is located has been entered upon and possession taken for the purpose of constructing it. But when a person so claiming damages has been put to trouble and expense by the proceedings,¹ the commissioners shall allow him full indemnity therefor, instead of the damages awarded, although no entry is made upon his land.

Damages to be estimated but not paid until, etc.
Indemnity.
G. S. c. 43, § 14.
22 Pick. 263.
2 Met. 558.
10 Met. 465.
12 Met. 123.
3 Cush. 81.
8 Cush. 360.
5 Gray, 372.
2 Greenl. 179.
101 Mass. 439.
108 Mass. 535.

21. If a person aggrieved by the indemnity awarded to him or by the assessment of his damages sustained by the laying out, widening, altering, relocating or discontinuance of any highway, street, town way, foot-way or private way, omits to file his petition for a jury to assess his damages within one year from the time of such laying out, widening, altering, relocating or discontinuance, and he has not received actual notice thereof at least sixty days before the expiration of such year, he may at any time within six months after his land shall have been actually entered upon for the construction or alteration of such way, or after the actual closing of the way upon such discontinuance, file his petition for the assessment of his damages by a jury in the superior court, and if it appears that he has not had such notice the court shall allow such petition to be prosecuted in the same manner and with the same effect as if the same had been filed within said year.

Damages from laying out or altering highways, etc.
1874, c. 341.
114 Mass. 481.

22. Petitions for the assessment of damages or for the abatement of assessments for betterments, for main drains, for common sewers, for sidewalks and for other public purposes, now required

Petitions for assessment of damages, etc., may be filed

¹ On this point see *Drury vs. Boston*, 101 Mass. 439.

with the clerk
of the court or
county commis-
sioners.
1874, c. 283.

by law to be filed in the superior court, or with the county commissioners, may also be filed in the clerk's office of said court, in vacation, or with the clerk of the county commissioners, when they are not in session, and such filing shall be deemed the commencement of proceeding.

Damages, how
estimated.
Set off.
G. S. c. 43, § 16.
See § 32.

23. In estimating the damage sustained by laying out, locating anew, altering, or discontinuing, a highway, or by an order for specific repair, regard shall be had to all the damages done to the party, whether by taking his property or injuring it in any manner; and there shall be allowed, by the way of set-off, the benefit, if any, to the property of the party by reason thereof.¹

When claimants
have different
interests, entire
damages or in-
demnity to be
paid to a trustee.
Ibid. § 17.
1875, c. 117, § 1.
See 1874, c. 388,
108 Mass. 535.

24. When persons having a claim for damages sustained in their property by the laying out, alteration, or discontinuance, of a highway, have different or separate interests in the property, so that an estate for life, or for a term of years in the same, belongs to one person, and the remainder or reversion in fee belongs to another, or where the real estate taken or affected is encumbered by any contingent remainder, executory devise or power of appointment, entire damages, or an entire sum as indemnity, shall be assessed in the same manner as is provided in other cases, without any apportionment thereof; and the amount of such damages or indemnity shall be paid over to, or be recoverable by, any person whom the parties owning the several interests may appoint, to be invested by him, when paid over or recovered, in bond, mortgage, or other good securities, and held in trust for the benefit of the parties according to their several interests; the annual income to be paid over to the person in whom was the estate for life, or term of years for the period such estate might have continued, and the remainder, after the termination of such estate, to be paid over absolutely to the person that was entitled to the reversion in fee, or to his heirs or devisees.

¹ The betterment act of 1871, c. 382, § 1, does not repeal § 16 of the highway act, Gen. Sts. c. 43. 116 Mass. 200. Concerning damages for which compensation can be recovered under this section, see 2 Mass. 492; 5 Mass. 435; 5 Met. 368; 2 Gray, 267; 4 Gray, 537; 5 Gray, 35; 13 Gray, 546; 14 Gray, 155, 214; 101 Mass. 439; 108 Mass. 60, 535. Concerning benefits as set off, see 4 Cush. 291; 11 Gray, 413, 415; 13 Gray, 546; 14 Gray, 155; 3 Allen, 133; 98 Mass. 312; 109 Mass. 243.

25. If any of the persons having an interest in such property shall, by reason of legal disability, be incapacitated from choosing a trustee, or if the parties in interest cannot agree upon a choice, the probate court of the county in which the property is situated, upon application, shall appoint some suitable person as trustee. Said trustee shall, before entering upon the duties of his trust, give a bond to the judge of probate and insolvency, with sufficient surety or sureties, in such penal sum as the judge directs, conditioned for the faithful performance of his duties as trustee under the provisions of this and the preceding section; which bond, upon breach of its condition, may be put in suit by order of the probate court for the use and benefit of the persons interested in the trust property, in like manner as is provided in case of bonds given by executors or administrators.

Trustee in certain cases to be appointed by judge of probate, etc.
G. S. c. 43, § 18.
See 1875, c. 117.
1874, c. 388.

26. When there shall be several parties, having several estates at the same time, in land or buildings, other than, and different from, the estates and interests for which provision is made in section twenty-four, and the land or buildings are taken or otherwise damaged, in whole or in part, by the laying out, locating anew, altering, or discontinuing, of a highway, or making specific repairs thereon, and one of such parties, by petition, as provided in this chapter, applies for a jury to ascertain his damages in the premises, all the other parties so interested may become parties to the proceedings under such petition, and the damages of all of them may be determined by the same jury, in the manner provided in the five following sections.

Several parties may go to the same jury.
G. S. c. 43, § 53.
See 1874, c. 388.
5 Met. 372.
3 Cush. 81.
7 Cush. 533.
10 Cush. 385.

27. Upon such application of a party thus interested, the commissioners shall order the petitioner to give notice thereof to all the other parties interested, by serving each of them, fourteen days at least before their next regular meeting, with an attested copy of such petition and the order thereon, that the other parties may, if they see cause, appear at the next meeting and become parties to the proceedings under the petition; and at the next meeting a jury shall be ordered, as before provided in this chapter, who shall, under the direction of the person presiding at the trial, proceed to hear all the persons who have become parties to the proceedings.

Notice to persons interested to become parties.
Ibid. § 54.

28. If, on such hearing, the jury find any of the parties entitled to damages, they shall assess the same in the following manner, to

Verdict to apportion damages.

G. S. c. 43, § 55. wit: they shall first find and set forth in their verdict the total amount of the damages sustained by the owners of such land and buildings, estimating the same as an entire estate, and as if the same were the sole property of one owner in fee-simple; and they shall then apportion the total amount of damages among the several parties whom they find to be entitled, in proportion to their several interests and claims, and to the damages sustained by them respectively, and set forth such apportionment in their verdict; and if they find any one or more of said parties not to have sustained damage, they shall set forth in their verdict that they award no damages to such party.

Verdict is conclusive on all who have notice, etc.
Ibid. § 56.

Costs of parties, how taxed.
Ibid. § 57.

29. The verdict, if accepted, shall be conclusive upon all parties interested who shall either have had notice as aforesaid, or by consent have become parties to the proceedings.

30. Each party recovering damages shall recover his several costs; and each party not recovering damages shall be liable for costs to the town or other corporation of which he shall have claimed damages, in like manner as if the proceedings were had under his several petition; but if a party shall, fourteen days before the trial, give notice in writing to the town or other corporation that may be liable for damages, that he relinquishes all claim for damages, and shall also, before the trial, file in the case a relinquishment of such claim, he shall not be liable for costs in the case.

Party neglecting to appear, to be barred.
Ibid. § 58.

31. If a person, having notice as aforesaid, neglects to appear and become a party to the proceedings in court, he shall be forever barred from making an application for damages.

ASSESSMENT OF BETTERMENTS.¹

Betterments may be assessed within two years.
1871, c. 382, § 1.

32. At any time within two years after any street, highway or other way is laid out, altered, widened, graded, or discontinued, when, in the opinion of the board of city or town officers authorized to lay out streets or ways respectively therein, any real estate, including that, a part of which may have been taken for such purpose,

¹ For decision involving the constitutionality of the betterment laws, see 104 Mass. 461. The exemption of the real estate of charitable institutions from taxation, by Gen. Sts. c. 11, § 5, *cl.* 3, is only from taxation imposed for the general purposes of government, and does not extend to taxation for local improvements under this statute. 116 Mass. 181.

shall receive any benefit and advantage therefrom, beyond the general advantages to all real estate in the city or town where the same is situated, such board may adjudge and determine the value of such benefit and advantage to any such estate, and may assess upon the same a proportional share of the expense of laying out, alteration, widening, grading or discontinuance; but in no case shall the assessment exceed one-half the amount of such adjudged benefit and advantage, nor shall the same be made until the work of laying out, altering, widening and grading is completed or discontinuance made; and in case of laying out a highway or town way by county commissioners, due allowance shall be made for any benefit set off under the provisions of section sixteen of chapter forty-three of the General Statutes [§ 23 of this digest].

33. Any such assessment upon real estate which is invalid by reason of any error or irregularity in the making thereof, and which has not been paid, or which has been recovered back, may be remade by such board, to the amount for which the original assessment ought to have been made, and the same shall be a lien upon the estate, and be collected in the same manner as reassessed taxes are.

34. The expense to be assessed upon the estates as herein provided shall include all damages for land and buildings taken; and, in estimating such damages, all buildings on the land, a part of which is taken, shall be included, and there shall be deducted therefrom the value of the materials removed, and of all buildings or parts of buildings remaining thereon; and the damages for land taken shall be fixed at the value thereof before such laying out, alteration or widening, and the damage so estimated shall be paid to the persons entitled thereto, in the same manner, and upon the same conditions, as are provided by law in other cases of laying out, alteration, widening, grading or discontinuance of streets and ways.

35. If the owner of any building or materials on land, a part or the whole of which is taken for the purposes named in this act, after reasonable notice in writing from the board authorized to make assessments as aforesaid, shall refuse or neglect to take care of, or remove such buildings or materials, such board may take such care of the same as public safety, or the preservation thereof demands, or may remove such buildings or materials either upon

1871, c. 382, § 1.
10 Allen, 88.
12 Allen, 223.
101 Mass. 509.
102 Mass. 19.
104 Mass. 461.
470-491.
106 Mass. 89,
350, 540, 549.
111 Mass. 123.
113 Mass. 97.
114 Mass. 416.
115 Mass. 377.
116 Mass. 181,
189, 193.

Errors, how
corrected.
1871, c. 382, § 2.

Betterments,
how composed.
Ibid. § 3.
108 Mass. 535.

City may take
care of build-
ings, etc., if
owner neglects
to do so.
Ibid. § 4.

1871, c. 382, § 4. the adjoining land of such owner, or otherwise; or they may sell the same at public auction, after five days public notice of such sale, and hold the proceeds of the sale for the benefit of such owner; and the expense incurred by said board, or the value thereof to the owner, shall be allowed in reduction of the damages which said owner is entitled to recover.

Estates may be
surrendered by
owners.
Ibid. § 5.

36. Any person owning real estate abutting on any street, highway, or other way which may be laid out, altered, widened, graded or discontinued, and liable to assessment under this act, may, at any time before the estimate of damages is made, give notice in writing to the board having authority to make the assessment, that he objects to the same, and elects to surrender his estate to the city or town where situated; and if said board shall then adjudge that public convenience and necessity require the taking of such estate, for the improvements named, they may take the whole of such abutting estate, and shall thereupon estimate the value thereof, excluding the benefit or advantage which has accrued from the laying out, alteration, widening, grading or discontinuance, and such owner shall convey the estate to such city or town, which shall pay him therefor the value so estimated, and the same may be recovered by an action of contract; and the city or town may sell any portion of said estate not needed for such improvements.

Assessments to
be a lien upon
estates.
Ibid. § 6.
106 Mass. 549.

37. All assessments made under this act shall constitute a lien upon the real estate so assessed, to be enforced in the same manner, with like charges for cost and interest, as provided by law for the collection of taxes; and if the owner of the estate shall give notice to the board authorized to make the assessment at any time before demand is made upon him for payment thereof, that he desires to have the amount of such assessment apportioned, said board shall apportion the same into three equal parts, and certify such apportionment to the assessors of the city or town, and said assessors shall add one of said equal parts, with interest thereon from the date of the apportionment, to the annual tax of said estate for the three years next ensuing;¹ and all assessments laid upon real estate, for any of the causes mentioned in this act, which

¹ A land-owner who applies for an apportionment of his assessment under this section will not be thereby estopped from appealing to the Superior Court under § 7. 106 Mass. 549.

shall remain unpaid after the same become due or payable, shall draw interest from the time when the same became due or payable, until the time of payment thereof. 1871, c. 382, § 6.

38. Any party aggrieved by the doings of such board, may apply by petition to the superior court for the county in which the estate is situated, filed in term time, or in the city clerk's office in vacation, within one year after the passage of the order or proceedings upon which the application is founded; and, after due notice to the city or town against which the petition is filed, a trial shall be had at the bar of the court in the same manner in which other civil causes are there tried by the jury, and if either party request it the jury shall view the place in question. Party aggrieved may apply to court. Ibid. § 7. 1873, c. 288. 104 Mass. 461. 106 Mass. 89, 549.

39. If the jury shall not reduce the amount of the assessment complained of, the respondent shall recover costs against the petitioner, which costs shall be a lien upon the estate, and be collected in the same manner as the assessment; but if the jury shall reduce the amount of the assessment, the petitioner shall recover costs, and all assessments shall be a lien on the estate for one year after the final judgment, in any suit or proceeding where the amount or validity of the same is in question, and be collected in the same manner as original assessments. Costs of suit, how settled. Ibid. § 8.

40. When an assessment is made upon an estate, the whole or any portion of which is leased, the owner of the estate shall pay the assessment, and may thereafter collect of the lessee an additional rent for the portion of the estate so leased, equal to ten per centum per annum on that proportion of the whole sum paid, which the leased portion bears to the whole estate, after deducting from the whole sum so paid any amount he may have received for damages to the estate, above what he has necessarily expended on such estate by reason of such damages. After assessment of betterment, rents may be increased. Ibid. § 9.

41. This act, except section four [§ 35 of this digest], shall not take effect in any town until the same is accepted by such town at a legal meeting called for that purpose, unless the town has passed the vote of acceptance provided for by section four of chapter one hundred and sixty-nine of the acts of the year eighteen hundred and sixty-nine. Act to be accepted. Ibid. § 10.

ACTION UNDER BETTERMENT LAW TO BE DECLARED.

Highways may be laid out, etc., by cities and towns under G. S. c. 43, notwithstanding their acceptance of betterment acts. 1874, c. 275, § 1. See § 23 and note.

Highways shall be deemed to be laid out under G. S. c. 43, unless expressly declared to be under betterment act. Ibid. § 2.

42. Highways and town ways may be laid out, constructed, altered, widened, graded or discontinued under the provisions of chapter forty-three of the General Statutes, and any general laws in amendment thereof, notwithstanding the acceptance by any city or town of any act authorizing the assessment upon estates benefited of a portion of the cost of such highways or town ways.

43. Every highway or town way hereafter laid out shall be deemed to be laid out under the provisions of said chapter forty-three of the General Statutes and any general laws in amendment thereof, unless the order laying out the same expressly declares the same to be laid out under the provisions of law authorizing the assessment of betterments.

REPAIR OF HIGHWAYS.¹

Ways and bridges to be repaired at expense of town. G. S. c. 44, § 1. 6 Allen, 449. 11 Gray, 353. 16 Gray, 278. 100 Mass. 255. 104 Mass. 18. 106 Mass. 276.

Towns to pay damages occasioned by rep'rs.

Ibid. § 19. 1 Pick. 418. 2 Met. 599. 8 Met. 179. 8 Cush. 69. 10 Cush. 411. 5 Gray, 372. 13 Gray, 601. 15 Gray, 486. 1 Allen, 155. 104 Mass. 13. 106 Mass. 84. 118 Mass. 248, 599.

Petitioner aggrieved may apply for jury, etc.

44. Highways, town ways, streets, causeways, and bridges, shall be kept in repair at the expense of the town, city, or place in which they are situated, when other provision is not made therefor, so that the same may be safe and convenient for travellers with their horses, teams, and carriages, at all seasons of the year.

45. When an owner of land, adjoining a highway or town way, sustains damage in his property by reason of any raising, lowering, or other act done for the purpose of repairing such way, he shall have compensation therefor, to be determined by the selectmen or mayor and aldermen, with whom he shall file his petition therefor after the commencement, and within one year from the completion of the work; and who shall finally adjudicate upon the question of damages within thirty days after the filing of the petition therefor, unless the parties agree in writing to extend the time. The benefit, if any, which the complainant may receive by reason of such alteration or repair, shall be allowed by way of set off.

46. If the petitioner is aggrieved, either by the estimate of his damages, or by a refusal or neglect to estimate the same, he may, within one year from the expiration of said thirty days, apply for

¹ As to the meaning of the word *repair* in Gen. Sts. c. 44, see 8 Allen, 51.

a jury, and have his damages ascertained in the manner provided where land is taken in laying out highways. Or he may, by agreement with the adverse party, and upon application made within the same time, have them ascertained by a committee to be appointed in the city of Boston by the superior court, and elsewhere by the county commissioners in their respective jurisdictions.

G. S. c. 44, § 20.
14 Gray, 216, 218.

DEFECTS IN HIGHWAYS.¹

47. If the life of a person is lost by reason of a defect or want of repair of a highway, town way, causeway, or bridge, or for want of suitable rails on such way or bridge, the county, town or person, by law obliged to repair the same, shall be liable to a fine

If life is lost through defect, etc., executor may recover \$1,000.

¹ The numerous decisions which have been rendered by the supreme judicial court upon the cases arising under §§ 21-26 of chap. 44, Gen. Sts. [§§ 47-52 in the text], have been collected and grouped under the following heads:—

Liability for defects other than those caused by ice and snow.—It is no defence to an action for an injury caused by a defect in a highway, that the town used ordinary care and diligence in repairing the road, if by such care the road was not made safe and convenient, but remained defective. 12 Cush. 488; 110 Mass. 506. It is only those who are using ways “as travellers” that can recover for injuries caused by defects. 13 Gray, 344. Towns are not obliged to keep the whole of a highway, from one boundary to the other, free from obstructions and fit for the use of travellers. 16 Pick. 189. Narrowness and crookedness are not defects. 105 Mass. 473. See, also, 3 Cush. 174; 5 Cush. 1; 6 Cush. 524; 4 Cush. 243; 3 Pick. 267; 13 Pick. 343; 19 Pick. 174; 21 Pick. 44; 7 Gray, 338, 421; 13 Allen, 186; 8 Cush. 195; 1 Allen, 182; 1 Allen, 101; 9 Gray, 386; 11 Gray, 154; 10 Allen, 290; 11 Allen, 318; 14 Gray, 242; 3 Allen, 574; 8 Allen, 237; 104 Mass. 84; 105 Mass. 313; 106 Mass. 276, 450; 116 Mass. 93; 107 Mass. 261, 264; 109 Mass. 126; 116 Mass. 573; 104 Mass. 75; 114 Mass. 527. Concerning liability in case of failure to provide a footway for passengers around an obstruction of a sidewalk, caused by building, see 108 Mass. 580. Concerning liability for injuries caused by falling signs, awnings, etc., see 5 Allen, 98; 13 Met. 292; 104 Mass. 75; 110 Mass. 514.

Defects caused by ice and snow.—Ridges and hillocks of ice formed by the freezing of melted and trodden snow upon a city sidewalk, making the surface uneven and peculiarly dangerous, may be found by a jury to be defects, for which, under the Gen. Sts. c. 44, § 22, the city is liable to one hurt by reason either of stumbling against, or of slipping upon them. 113 Mass. 503. But mere slipperiness of the surface of a highway by reason of ice is not a defect

G. S. c. 44, § 21.

of one thousand dollars, to be recovered by indictment to the use of the executor or administrator of the deceased person, for the benefit of his heirs, devisees, or creditors: *provided*, that the county, town, or person, had previous reasonable notice of the defect or want of repair of such way or bridge.

for which the city is liable. 100 Mass. 49. See, also, 13 Pick. 343; 13 Met. 297; 6 Cush. 141; 13 Gray, 59; 14 Gray, 249; 6 Allen, 110; 12 Allen, 566; 14 Allen, 508; 8 Allen, 136; 10 Allen, 147; 97 Mass. 268; 100 Mass. 49, 185; 102 Mass. 329; 104 Mass. 78; 109 Mass. 204, 446; 110 Mass. 135.

Railings and barriers. — A railing by the side of a highway is sufficient within the Gen. Sts. c. 44, § 22, if it is suitable for the ordinary exigencies of travel upon such a road at such a place. 107 Mass. 339. The sufficiency of the railing is a question for the jury. *Ibid.* Towns are not obliged to maintain railings or fences merely to prevent travellers from straying from the way. 1 Allen, 30. See, also, 2 Cush. 600; 6 Cush. 396; 3 Allen, 374, 398, 402; 4 Gray, 596; 8 Cush. 195; 4 Cush. 299; 16 Pick. 170; 7 Gray, 338; 105 Mass. 470; 105 Mass. 599; 107 Mass. 347; 110 Mass. 305, 522; 112 Mass. 43, 362, 489; 117 Mass. 585; 118 Mass. 463.

Defects in bridges. — No action lies against a city which is bound to keep a bridge in repair, to recover damages sustained by reason of a defect therein, by an inhabitant of the city who, at the time of receiving the injury complained of, was driving across the same at a rate faster than a walk, in violation of a city ordinance, although he did not know of the existence of the ordinance. 3 Allen, 407. For other decisions concerning defects in bridges, see 8 Allen, 245, 564; 7 Cush. 490; 16 Pick. 541; 18 Pick. 312; 11 Gray, 157; 117 Mass. 509.

Concerning notice to the city. — Notice to a town of a defect in a highway may be inferred from the notoriety of the defect, and its continuance for such a length of time as to lead to the presumption that the proper officers of the town knew, or, with proper vigilance and care, might have known of it. 13 Pick. 94. Notice of a cause outside the highway, which is likely to produce a defect in the highway, is not equivalent to notice of the defect itself. 102 Mass. 329. See, also, 4 Cush. 243; 16 Gray, 508; 101 Mass. 99; 102 Mass. 526; 110 Mass. 135; 114 Mass. 241, 527; 118 Mass. 71.

Direct and proximate cause. — The action given by Rev. Sts. c. 25, § 22 (Gen. Sts. c. 44, § 22), must be for a damage sustained in using the road with due care and skill. The damage for which the statute gives a remedy must be one of which the defect in the highway is the direct and proximate cause, and therefore damage sustained in consequence of not being able to use a highway, because of snow negligently suffered to remain thereon, cannot be recovered under it. 13 Met. 297; 6 Cush. 141. An object within the limits of a highway which causes a horse to spring aside, and thus suffer damage, is not a defect for which a town is liable under the statute. 114 Mass. 507. See, also,

48. If a person receives or suffers bodily injury, or damage in his property, through a defect or want of repair, or of sufficient railing in or upon a highway, town way, causeway, or bridge, he may recover, in an action of tort, of the county, town, place, or persons by law obliged to repair the same, the amount of damage sustained thereby, if such county, town, place, or persons had reasonable notice of the defect, want of repair, or of sufficient

Damages for defect of ways.
G. S. c. 44, § 22.

13 Allen, 186; 2 Cush. 600; 8 Cush. 522; 11 Cush. 11, 563; 4 Gray, 395; 6 Gray, 447; 11 Gray, 142; 4 Allen, 557; 5 Allen, 98; 98 Mass. 80; 105 Mass. 310; 107 Mass. 347; 115 Mass. 571.

Where the plaintiff's negligence and other causes concur. — In an action against a town for an injury occasioned by a defect in a highway, the question whether or not there was negligence, or want of ordinary care, on the part of the plaintiff, is to be determined by the jury, under all the circumstances of the case. 4 Cush. 247. See, under this head, 5 Mass. 294; 4 Mass. 422; 2 Pick. 621; 7 Pick. 188; 13 Pick. 94; 14 Pick. 177; 16 Pick. 541; 21 Pick. 146; 3 Cush. 174; 6 Cush. 524; 12 Cush. 488; 4 Gray, 178; 7 Gray, 100, 104; 11 Gray, 342; 16 Gray, 181; 1 Allen, 177; 3 Allen, 38, 402; 4 Allen, 113; 6 Allen, 39; 8 Allen, 51, 137, 522; 10 Allen, 25, 535; 97 Mass. 258; 101 Mass. 93; 103 Mass. 509; 106 Mass. 278; 107 Mass. 347; 117 Mass. 204.

Liability of individuals and private corporations for obstruction. — A town which has been compelled to pay damages for an injury from a defect in a highway, occasioned by a nuisance placed therein by an individual, may recover of the latter the damages so paid. 4 Cush. 275; 23 Pick. 24; 12 Met. 182; 1 Cush. 453, 277; 10 Gray, 496; 14 Gray, 249; 16 Gray, 303; 1 Allen, 187; 2 Allen, 307; 4 Allen, 138; 9 Allen, 17; 109 Mass. 283; 110 Mass. 39; 115 Mass. 431.

Defects outside of the travelled way. — A town is liable for injuries received by reason of a defect without the limits of the located way, if it is so near the way as to render travelling there dangerous, and there is nothing to warn travellers of it. 7 Gray, 338. See under this head, — 1 Cush. 443; 4 Cush. 307; 7 Cush. 498; 16 Pick. 189; 4 Gray, 65; 8 Met. 388; 1 Allen, 30; 2 Allen, 552; 3 Allen, 402; 100 Mass. 255; 110 Mass. 522.

Evidence, trial, damages, etc. — In an action against a town for an injury sustained by the overturning of the plaintiff's carriage on a highway in such town, the burden of proof is on the plaintiff to show that he was driving with ordinary skill and diligence at the time when the accident happened. 21 Pick. 146. See, also, 13 Pick. 94; 1 Cush. 451; 3 Cush. 174; 4 Cush. 365; 6 Cush. 396, 524; 10 Cush. 260; 12 Cush. 287, 488; 1 Gray, 510; 4 Gray, 65; 5 Gray, 61; 7 Gray, 338; 11 Gray, 157, 342; 16 Gray, 181, 508; 9 Allen, 200; 1 Allen, 177, 180; 3 Allen, 402; 12 Allen, 85; 6 Allen, 110; 8 Allen, 136, 560; 10 Allen, 18, 25, 147; 103 Mass. 509; 105 Mass. 80, 82; 107 Mass. 347.

G. S. c. 44, § 22. railing, or if the same had existed for the space of twenty-four hours previous to the occurrence of the injury or damage. But no such damage shall be recovered by a person whose carriage and load thereon exceed the weight of six tons.

Party liable may tender, etc.
Ibid. § 23.
7 Cush. 581.
4 Allen, 560.
5 Allen, 99.

49. If, before the entry of an action provided for in the preceding section, the defendant tenders to the plaintiff the amount which he would be entitled to recover, together with all legal costs, and the plaintiff does not accept the same, and does not recover upon the trial more than the sum so tendered, the defendant shall recover his costs.

Penalty on towns for neglect, etc.
G. S. c. 44, § 24.

50. If a town neglects to repair any of the ways or bridges which it is by law obliged to keep in repair, or neglects to make the same safe and convenient when encumbered with snow, such town shall pay such fine as the court in its discretion may order.

Fines imposed appropriated for repairs except, etc.
Ibid. § 25.

51. Except in cases where it is otherwise specially provided, fines imposed on a town for deficiencies in the ways and bridges within the same, shall be appropriated to the repairing of such ways and bridges; and the court imposing such fine shall appoint one or more persons to superintend the collection and application of the same, who shall make a return of their doings therein to the court.

Location when not to be denied.
Ibid. § 28.

52. If, on the trial of an indictment or action, brought to recover damages for an injury received by reason of a deficiency or want of repair in a highway, town way, causeway, or bridge, it appears that the county, town or person, against whom such suit is brought, has, at any time within six years before such injury, made repairs on such way or bridge, such county, town, or person, shall not deny the location thereof.

TAKING OF GRAVEL AND CLAY PITS.

May lay out land for gravel and clay pits, to be used in repairing streets.
1869, c. 237, § 1.
May lay out ways for access to pits.

53. The mayor and aldermen of cities, and the selectmen of towns, may select and lay out any lots of land within their respective limits, not appropriated to public uses, nor owned by any other city or town, as gravel and clay pits, from which earth and gravel necessary to be used in the construction, repair or improvement of the streets or ways which such city or town may by law be bound to construct or keep in repair, may be taken, together

with such ways as they may deem to be necessary for convenient access thereto. All proceedings in relation to the taking and laying out of such land, shall be the same as are now provided by law in the cases of laying out streets and town ways respectively; and the report of such laying out shall specify the extent and depth of excavation to be permitted upon such land, and the time, not exceeding ten years next after such laying out, during which such land or way shall be held and used for the purposes aforesaid.

Same proceedings as in laying out highways. 1869, c. 237, § 1.

Extent of excavation permitted to be specified.

54. Any person aggrieved in the assessment of his damages by the board of mayor and aldermen, or selectmen, for land taken under this act, may have the matter of his complaint determined by a jury, in the same manner as is now provided by law in cases of highways, which jury shall be applied for within one year after such assessment.

Damages, how to be determined. Ibid. § 2.

55. Any land taken by virtue of this act shall be held and used by such cities or towns for no other purposes than those herein specified, and shall revert to the owner, his heirs and assigns, upon the expiration of the time limited; and the owner may, during such time, enclose, occupy and use such land, in any manner not inconsistent with the use of the same by such city or town for the purposes aforesaid.

Land taken to be used only for purposes specified, and to revert to owner at expiration of the time limited. Ibid. § 3.

WAYS OVER BURYING-GROUNDS.

56. No highway or town way shall be laid out or constructed in, upon, or through an enclosure used or appropriated for the burial of the dead, unless authority to that effect is specially granted by law, or the consent of the inhabitants of the town where such enclosure is situated is first obtained.

Ways not to be laid out over burying-grounds, unless, etc. G. S. c. 43, § 89. See 1862, c. 222, § 2.

57. No highway or town way shall be laid out or constructed in, upon, or through such part of an enclosure belonging to private proprietors, as may be used or appropriated to the burial of the dead, unless the consent of such proprietors is first obtained therefor.

Same subject. Ibid. § 90.

WAYS OVER PUBLIC COMMONS AND PARKS.¹

Streets, etc., not to be laid out over a public common or park that has been used by the public for twenty years or more, etc., except after public notice, and with the consent of the inhabitants of the city or town. 1875, c. 163, § 1.

58. No highway, town way, street, turnpike, canal, railroad or street railway, shall be laid out or constructed in, upon, through or over any public common or public park which has been dedicated to the use of the public or appropriated to such use without interruption for the period of twenty years or longer, nor shall any part of any such public common or public park be taken for widening or altering any highway, town way or street previously located or constructed, except after public notice to be given in the same manner as provided in cases of applications for the location and alteration of highways, in which notice shall be specifically set forth, the extent and limits of the portion of the public common or public park proposed to be taken, and unless the consent of the inhabitants of the city or town in which the same is situated is first obtained. Such consent shall be expressed by vote of the inhabitants whenever as many as ten legal voters file a request in writing, to that effect, with the selectmen of the town or the mayor and aldermen of the city, within thirty days after the publication of the notice; in the absence of such request consent shall be presumed to be granted.²

Lands of a state institution not to be taken for street, etc., without leave of the legislature. Ibid. § 3.

59. No lands of any public institution belonging to the commonwealth, or any portion of such lands, shall be taken for any highway, town way, street, turnpike, canal, railroad or street railway, without leave of the legislature previously obtained.

MARGINAL FREIGHT RAILWAY.

Aldermen, if marginal freight railroad company apply, may widen streets. 1867, c. 170, § 9.

60. The board of aldermen of the city of Boston may, upon the application of the marginal freight railway company, straighten the streets through which said railway is authorized to pass, and widen said streets so that they shall not be less than fifty feet in width between the curbstones; and said straightening and widening shall be made in accordance with the provisions of chapter one

¹ For provisions in relation to laying out highways over railroads see "Railroads," p. 635.

² For provisions of this act in relation to the manner of obtaining consent of inhabitants, see "Parks," *ante*, p. 586.

hundred and seventy-four of the acts of the year eighteen hundred and sixty-six [repealed and superseded by St. 1871, c. 382, being §§ 32-41 of this digest]; and said marginal freight railway company shall pay said city one-half of the net cost to said city of such straightening and widening.

Company shall pay one-half cost.
1867, c. 170, § 9.

ENTRY UPON LANDS TAKEN.

61. The laying out or alteration of any highway, town way, or private way, shall be void as against the owner of any land over which the same shall be located, unless possession shall be taken of such land for the purpose of constructing such highway, town way, or private way, within two years from the time when the right to take possession for such purpose first accrues by law: *provided, however,* that an entry for the purpose of constructing any part of the laying out or alterations in such way shall, for the purposes of this act, be deemed a taking of possession of all the lands included in the laying out or alterations made upon the same petition.

Laying out, etc., of way to be void as against owner of land, unless, etc.
1869, c. 303, § 1.
98 Mass. 491.
101 Mass. 439.
See § 20, *ante*.

TERMINI AND ANGLES OF ROADS.

62. The county commissioners, mayor and aldermen, and selectmen, shall cause permanent stone bounds, not less than three feet long, two feet of which at least shall be inserted in the earth, to be erected at the termini and angles of all roads laid out by them, when practicable; and when not so, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for such stones; or said bounds may be permanent stone bounds, not less than three feet long, with holes drilled therein, and filled with lead, placed a few inches below the travelled part of the street or way, as the officer whose duty it is to cause the same to be erected may determine. And if they neglect to establish such monuments after being notified so to do by an owner of land through which any such way is laid out (since the twenty-fifth of April, eighteen hundred and forty-eight), the county, if it be a county road, and the city or town, if it be a city or town road, shall pay to the owner of the land the sum of fifty dollars for each month that such neglect continues, to be recovered in an action of tort.

Board of aldermen to mark termini and angles of ways. Penalty for neglect.
G. S. c. 43, § 88.
7 Cush. 394.
7 Gray, 465.

If location of street is uncertain, board of aldermen to ascertain, etc.
 G. S. c. 43, § 87.
 4 Allen, 488.

63. When ten or more freeholders represent to the mayor and aldermen of a city, or selectmen of a town, that the exact location of a street, road, or way, over which they have jurisdiction, cannot readily be ascertained, they shall make investigation thereof, and if it appears that the representation is correct, shall, after giving the notice required in laying out a similar road or way, proceed to ascertain the correct location, erect the necessary bounds, and file a certificate thereof, for record.

DEDICATION OF WAYS.

Ways not chargeable unless, etc.
 G. S. c. 43, § 82.
 4 Cush. 332.
 5 Gray, 73.
 7 Gray, 343.
 12 Gray, 413.
 1 Allen, 153, 154.
 12 Allen, 404.
 Board of aldermen to close such ways, or caution the public, etc.
 G. S. c. 43, § 83.
 102 Mass. 489.

64. No way opened and dedicated to the public use, which has not become a public way, shall be chargeable upon a city or town as a highway or town way, unless the same is laid out and established by such city or town in the manner prescribed by the statutes of the commonwealth.¹

65. The mayor and aldermen and selectmen, shall whenever the public safety demands it, direct and cause the entrances of such ways entering on and uniting with an existing public highway, to be closed up; or may by other sufficient means caution the public against entering upon such ways; and if any such way shall not be closed, or sufficient notice given that the same is dangerous, the city or town shall be liable for damages arising from defects therein in the same manner as if it had been duly laid out and established.

FENCES AT WAYSIDES.

Lands abutting on highway to be fenced.
 1867, c. 241, § 1.

66. Whenever the owner of a lot abutting upon any street or way in any city of this commonwealth shall dedicate to, or permit to be used by the public, a portion of his land lying between said street or way and the range of the buildings fronting on the same, it shall be the duty of such abutter to keep every part of the land so dedicated, or so permitted to be used, in such condition as the safety and convenience of the public shall, in the opinion of the board of aldermen, require; and if the owner of

¹ A way cannot be proved to have become a public highway by dedication or prescription, so as to render the town liable for its repair, without proof that it had become such before June, 1846, the time when this statute [1846, c. 803] took effect. 16 Gray, 228.

any such abutting lot shall, after reasonable notice, given by the board of aldermen or mayor, neglect or refuse to put that portion of his land so dedicated to, or permitted to be used by the public, into the condition aforesaid, by executing the specific repairs or improvements required by the board of aldermen, or to close the same from public use by a substantial railing or guard, it shall be lawful for said board of aldermen to put said land into the condition which, in their opinion, the public convenience and safety require, and to assess the expense thereof upon the owner; and all assessments so made shall be a lien upon such abutting lots in the same manner as taxes are a lien upon real estate. 1867, c. 241, § 1.

PROTECTION OF WAYS AND BRIDGES.

67. Whenever, in the opinion of the mayor and aldermen of a city, or the selectmen of a town, it is necessary to enter upon, use or take any land for the purpose of securing or protecting any public way or bridge, it shall be lawful for them to enter upon, use or take the same. City may take land to protect public ways or bridges. 1868, c. 264, § 1.

68. All damages sustained thereby shall be recovered in the manner provided for the assessment and award of damages occasioned by the laying out, altering or discontinuance of town ways. Damages therefor. Ibid. § 2.

WIDTH OF STREETS.

69. No street or way shall hereafter be opened in the city of Boston, of a less width than thirty feet, except with the consent of the board of aldermen, in writing, first had and obtained for that purpose. No street to be opened less than thirty feet wide, except, etc. 1845, c. 236, § 2.

PAVING STREETS AND SIDEWALKS.

70. By the act of seventeen hundred and ninety-nine, chapter thirty-one, section one, it was provided that all streets in Boston should be paved agreeably to the following regulations, viz.: The footpath or walk on each side of every street shall be of the breadth of one-sixth part of the width of the whole street, and shall be laid or paved with bricks or flat stones, and secured with a beam or cut stone along the outside thereof; and the middle or Paving of streets and sidewalks. 1799, c. 31, § 1.

1799, c. 31, § 1. remaining four-sixths of every street, shall remain as a passage-way for carriages of burden or pleasure; and shall have a gutter on each side thereof, or otherwise, as the surveyors of highways in the said town shall determine; and shall be paved with good and sufficient paving-stones: *provided, always*, that if in any street so to be paved, the sides shall not exactly range, the gutter or outside of the footwalk shall be laid out as nearly in a straight line as the street will admit of; and in all squares, and other large open spaces, and in all streets, the breadth of which shall not conform to this law, the breadth of the footwalk, and the ascent and descent, and the crowning of the pavement in every street, shall be regulated by the surveyors of highways.

Squares, etc.

Regulation of width and height of sidewalks, and acceptance thereof.

1833, c. 123.

5 Cush. 1.

6 Cush. 524.

71. The provisions of the preceding section were essentially modified by the act of eighteen hundred and thirty-three, chapter one hundred and twenty-eight, which provides that the city council of the city of Boston may, from time to time, by any ordinance or ordinances, empower the surveyors of highways of said city so to regulate the width and height of the sidewalks of any public squares, places, streets, lanes, or alleys, in said city, as shall, in the judgment of said surveyors, be most conducive to the convenience and interest of said city, any law of the commonwealth to the contrary notwithstanding; and may also empower said surveyors to accept such sidewalks, after the same shall be put in good and perfect repair by the abutters on said squares, places, streets, lanes, and alleys, and after the same shall have been relinquished in writing to the said city by such abutters; and may also order that, after such relinquishment, such sidewalks may be maintained at the expense of said city.¹

Owner to pave the sidewalk at his own expense.

1799, c. 31, § 2.

Materials therefor.

1809, c. 28, § 1.

72. Where the cartway in any public street shall be ordered to be paved, every owner of the lot or lots of ground upon said street shall, without delay, at his own cost, cause the footway in front of his ground to be paved with bricks or flat stones, and kept in repair; and in paving or repairing the pavement of any street, no person shall place timber or wood in front of his or her house or lot, to support the footwalk, but the same shall be supported with hammered or cut stone; the same to be done under the direction of, and to the approbation of, the surveyors of high-

¹ See the ordinance of the city in relation to streets, § 48, *et seq.*, *post.*

ways; and if the owner or owners of such lots shall neglect to ^{1799, c. 31, § 2.} pave with brick or flat stones, and to support the footway, for the space of twenty days after he, or the tenant of such lot, or the attorney of the said owner or owners, shall have been thereto required by any of the surveyors of highways, then it shall be lawful for the said surveyors of highways, and they are enjoined and required to pave the said footways with brick or flat stones, and to support and to defend the same, and to repair the same; and shall recover the whole amount thereof by action of the case, to be brought by the surveyors of highways, before any court proper to try the same: *provided, nevertheless*, that in all cases where applications may be made for new paving of streets, any individuals who may be affected thereby may make their objections to the mayor or aldermen, or surveyors of highways, who are directed to take them into consideration while deliberating on the expediency of said application, and to pave the same at the expense of said town, whenever they shall think it expedient.

Individuals may
object to paving.

73. The surveyors of highways of the city of Boston [the board of aldermen], whenever they shall judge it expedient, may order any street of said city to be macadamized; and the several provisions of an act entitled "An act to regulate the paving of streets in the town of Boston, and for removing obstructions in the same," passed on the twenty-second day of June, in the year of our Lord one thousand seven hundred and ninety-nine, and of the several acts in addition thereto, shall be deemed and taken to apply to streets ordered to be macadamized, as well as to streets ordered to be paved in said city, and the macadamizing of any of said streets shall, to all intents and purposes of said several acts, be deemed equivalent to the paving of the same, and shall create the same liabilities in all respects, under the said several acts, as would be created under them by the paving of such streets.

Streets may be
macadamized,
and same provi-
sions shall ap-
ply.
1831, c. 17.
Charter, § 41.

74. The board of mayor and aldermen in any city may grade and construct sidewalks, and complete any partially constructed sidewalk in any street of such city, as the public convenience may require, with or without edgestones, as said board shall deem expedient, and may cover the same with brick, flat stones, concrete,

Sidewalks may
be constructed
in cities, and
portion of ex-
pense assessed
upon abutters.

1872, c. 303, § 1.
 114 Mass. 388.
 114 Mass. 546.

gravel or other appropriate material, and may assess upon the abutters on such sidewalks, in just proportions, not exceeding one-half of the expense of the same; but all assessments so made shall constitute a lien upon the abutting land, and be collected in the same manner as taxes on real estate are now collected, and such sidewalks, when constructed, with edgestones and covered with brick, flat stones or concrete, shall afterwards be maintained at the expense of such city. When any such sidewalk shall be permanently constructed with edgestones, and covered with brick, flat stones or concrete, as aforesaid, there shall be deducted from the assessment therefor any sum which shall have been previously assessed upon the abutting premises, and paid to the city for the expense of the construction of the same in any other manner than with edgestones and with brick, flat stones or concrete as aforesaid; and such deduction shall be made *pro rata*, and in just proportions for the assessments upon different abutters, who, at the time of such assessments are owners of the estate which at the time of such former assessments was the estate of the abutters who had previously paid such former assessments.

Set-off.
 Ibid. § 2.

75. In estimating the damage sustained by any party by the construction of sidewalks as aforesaid, there shall be allowed, by way of set-off, the benefit, if any, to the property of the party by reason thereof.¹

Abutter not to
 be assessed ex-
 ceeding one per
 cent. of valua-
 tion of estate.
 1874, c. 107.

76. By an act passed in 1874 the above act [St. 1872, c. 303, §§ 74-75 of the text] was amended so as to provide that no abutter shall be assessed for the expense of any sidewalk a sum exceeding one per cent. of the valuation of his estate abutting on such sidewalk as fixed by the annual assessment last preceding the construction of such sidewalk. But it was provided that the amendatory act should not apply to sidewalks then constructed under the act of 1872, nor to any city unless accepted by the city council thereof.

¹This act (1872, c. 303, being §§ 74-75 of the text) was accepted by the city council May 4, 1872. The amendatory act of 1874 has not yet been accepted.

OBSTRUCTIONS IN STREETS.

77. No canopy, balcony, platform, or cellar door, or step¹ in any street, lane, or alley in the city of Boston, shall project into such street more than one-tenth part of the width of the street, and in no case more than three feet; and all cellar doors hereafter to be made or repaired, shall be built with upright cheeks, and shall not project from the line of the house more than six inches; and if any proprietor or owner of any such canopy, balcony, platform, or cellar door, or steps, shall refuse or neglect to remove or take down the same within five days after notice and direction given him, or them, by the surveyors of highways, or any person empowered by them to that purpose, such owner or proprietor shall forfeit and pay the sum of two dollars for each and every day the same shall remain after the expiration of the said five days.

Canopy, balcony, platform, and cellar doors.
1799, c. 31, § 4.
115 Mass. 217.
117 Mass. 114.

Penalty.

78. No post shall be erected or set in any of the streets of the said city of Boston, except at the corners or intersection of two streets, and in such other places as the surveyors of highways may authorize and direct; and the said surveyors may remove the same. And no person shall plant any tree² in any street of the said city of Boston without leave first obtained from the surveyors of highways, who shall have power to remove the same;³ and no person shall in future make, erect, or have any portico or porch, any bow-window, or other window, which shall project into the streets of the said city of Boston more than one foot beyond the front of his or her house; or hang any sign, or any goods, wares, or merchandise, which shall project into the street more than one foot beyond the front of his or her house or lot; and if any person shall hereafter offend against this provision, every person so offending shall forfeit and pay the sum of one dollar for each and every day such portico or porch, bow-window or other window, shall be continued,

Posts.
Ibid. § 5.

Trees.

Porticos,
porches, and
bow-windows.

Projecting signs.

Penalty.

¹ Steps projecting from a house into a highway so as to obstruct it are a nuisance at common law; and under the Gen. Sts., c. 46, §§ 1, 2, maintaining them for any time less than forty years is no bar to an indictment therefor. 107 Mass. 234. See also 115 Mass. 431.

² See "Trees," p. 863.

³ A portion of this section, in relation to carriages and wheelbarrows, was repealed by Statute 1847, c. 224, § 3.

1799, c. 31, § 5.

after notice given to him by the surveyors of highways, or by any person by them authorized to that purpose.

City council
may regulate
erection of bal-
ustrades, etc.
G. S. c. 19, § 13.
12 Gray, 161.
115 Mass. 217.
117 Mass. 114.
See note, p.

79. The city council of each city may make such rules and regulations for the erection and maintenance of balustrades or other projections upon the roofs or sides of buildings therein as the safety of the public require, with penalties for the violation thereof not exceeding twenty dollars for each offence; but no such rule or regulation shall take effect until the same has been published at least sixty days in some newspaper printed in the city, or in the county in which the city is situated.

Placing goods in
the street.
Idib. § 6.

80. If any person or persons shall continue to place in the street, contrary to the meaning of this act,¹ any goods, wares, or merchandise, it shall be lawful for the surveyors of highways of the said city of Boston, or any person empowered by them, to remove such goods, wares, and merchandise, and to keep them in safe custody; and the proprietor or owner of such goods, wares, and merchandise shall not have the same goods restored until he or they shall have paid to the person or persons so removing them, all expenses of removing and storing them, and a reasonable compensation for the time so employed in their removal, as well as the fine aforesaid; and if any person shall place or pile any empty boxes, barrels, hogsheads, or other conveniency capable of containing goods or merchandise, or that may have contained goods or merchandise, in any part of the streets of the said city of Boston, more than five minutes after notice given to remove the same, such person shall forfeit and pay the sum of two dollars for each and every such offence, to be recovered by action of debt, by the surveyors of highways, before any justice of the peace in the said county.²

Boxes, barrels,
etc.

Penalty.
1852, c. 312, § 1.

How fines shall
be distributed.
1799, c. 31, § 8.

81. All the forfeitures and fines which may be recovered in pursuance of the act of the year seventeen hundred and ninety-nine, chapter thirty-one, shall go and be distributed one moiety thereof to the poor of the city of Boston, and the other moiety to the surveyors of highways.³

¹The act of 1799, c. 31, is referred to.

²Under Gen. Sts. c. 116, § 41, and St. 1866, c. 279, § 1, the municipal court of the city of Boston has the same jurisdiction as justices of the peace in all civil actions and proceedings.

³The seventh section of St. 1799, c. 31, was repealed by St. 1847, c. 224, § 3.

RAISING MERCHANDISE IN STREETS.

82. No person shall raise up from any street, wharf, or place of public resort, within the city of Boston, for the purpose of storing the same, any cask, bale of goods, or other articles of merchandise, into the second or any higher story of any house, store, or other building, upon or adjoining the same, and on the outside of such buildings; and no person shall deliver, from the second or any higher story of any house, store, or other building, on the outside of the same, which shall adjoin upon any street, wharf, or place of public resort within the said city of Boston, any cask, bale of goods, or other article of merchandise, except at such times and places, and under such restrictions and limitations, as the mayor and aldermen for the time being shall, by writing, authorize and direct. And every person who shall offend in manner aforesaid, shall forfeit and pay to the commonwealth, for each and every such offence, a sum not exceeding one hundred dollars, nor less than ten dollars, to be recovered by indictment in the superior court, with costs of prosecution: *provided*, that this shall not be construed to extend to the raising any materials or other articles which may be necessary in erecting, repairing, or taking down any building within the said city of Boston, or for the convenience thereof, or for removing any merchandise or other article in case of danger by fire, or other inevitable casualty.

Articles shall not be raised for the purposes of storage, from street, etc., into second story, etc., except, etc. 1816, c. 90, § 4.

MOVING BUILDINGS.

83. No person shall move a building in any public street or way in any town, without written permission from the selectmen of such town, to be granted upon such terms and conditions as in their opinion the public safety may require; and the provisions of this act may be enforced by injunction, to be issued on petition by the superior court in term time, or by a single justice thereof in vacation.

Buildings not to be moved in streets unless, etc. 1870, c. 314.

CARRIAGES, MUSICIANS, ETC.

Cities and towns may make regulations relating to carriages, coasting, etc. 1875, c. 136, § 1.

84. The mayor and aldermen of any city, and the selectmen of any town, may make such rules and regulations in relation to the passage of carriages, wagons, carts, trucks, sleds, sleighs, horse-cars, or other vehicles, or to the use of sleds or other vehicles for coasting in and through the streets or public ways of such city or town, as they shall deem necessary for the public safety or convenience, with penalties for violation thereof, not exceeding twenty dollars for one offence.¹

Cities may regulate and control itinerant musicians. Ibid. § 2.

85. The mayor and aldermen of any city may adopt rules and orders not inconsistent with the laws of this commonwealth for the regulation and control of persons who shall, after the passage of this act, frequent the streets and public places in such city, playing on hand-organs or other musical instruments, beating drums, blowing trumpets, or coasting with sleds or other vehicles, with penalties for the violation thereof, not exceeding twenty dollars for each offence.²

DRIVING CATTLE.

May regulate the driving of cattle, etc., over public ways. 1876, c. 20.

86. Any city or town shall have power to regulate, by suitable ordinances or by-laws, to be made in the manner now provided by law, the passage and driving of sheep, swine and neat cattle through and over the public streets, ways, causeways and bridges within the limits of such city or town, and to annex penalties not exceeding fifty dollars for each violation thereof.³

NAMING STREETS AND PLACES.

Board of aldermen may name private ways. 1868, c. 199, § 1.

87. The board of aldermen of the city of Boston may, from time to time, designate the name by which any street, place, court, or other way, shall be known or called, which now is, or hereafter shall be, opened in said city over any private land, by the owners thereof, and dedicated to, or permitted to be used by the public; and any person who shall, by the erection of signs, or by other

¹ For rules and regulations in relation to carriages, etc., see "Carriages," *ante*, p. 151; concerning coasting in streets, see § 20, p. 777, *post*.

² For rules regulating itinerant musicians, see "Musicians," *ante*, p. 535.

³ See ordinance on "Streets," *post*, p. 786, § 44.

means, undertake to make any such street, place, court or way publicly known by any name not so designated by said board of aldermen, shall forfeit a sum not exceeding one hundred dollars for each offence. 1868, c. 199, § 1.

RIGHTS OF GAS COMPANY IN STREETS.

88. The Boston Gas Light Company, with the consent of the mayor and aldermen, shall have power and authority to open the ground in any part of the streets, lanes, and highways in the city for the purpose of sinking and repairing such pipes and conductors as it may be necessary to sink for the purpose expressed in the act incorporating said company. And the said corporation, after opening the ground in the said streets, lanes, or highways, shall be held to put the same again in repair, under the penalty of being prosecuted for a nuisance: *provided*, that the said mayor and aldermen, for the time being, shall at all times have the power to regulate, restrict, and control the acts and doings of said corporation, which may, in any manner, affect the health, safety, or convenience of the inhabitants of said city.¹

Rights of gas company to sink pipes, etc., to be controlled by the board of aldermen.
1822, c. 41, § 3.
106 Mass. 450.

BACK BAY STREETS.

89. By the act of April six, eighteen hundred and sixty-one, in relation to streets on the Back bay, the various streets and ways on the Back bay, in the city of Boston, and on the northerly side of the milldam, as laid down on the general plan thereof, accompanying the fifth annual report of the commissioners on the Back bay, and dated Boston, January twenty-first, eighteen hundred and fifty-seven, and deposited in Suffolk registry of deeds August thirty-first, eighteen hundred and fifty-eight, with such modifications and alterations as have been made by the commissioners, shown on the plan recorded in Suffolk registry of deeds, liber

Streets on the Back bay.
1861, c. 142.

¹ Similar privileges were granted to the Roxbury gas light co. by St. 1852, c. 189; the East Boston gas light co., 1853, c. 13; the South Boston gas light co., 1852, c. 103, with authority to lay pipes in Dorchester, 1853, c. 320; the Charlestown gas light co., 1846, c. 98; the Dorchester gas light co., 1854, c. 9; the Brighton gas light co., 1853, c. 29; the Jamaica Plain gas light co., 1853, c. 63.

1861, c. 142.

seven hundred and eighty-eight, folio one hundred and fifty-nine, are hereby ratified and confirmed; and the said commissioners shall have the general control of all streets, ways, and squares on the land of the commonwealth, and may offer them, or any portion of them, for acceptance by the city of Boston, on such terms and conditions as they may deem expedient, subject to the approval of, the governor and council: *provided*, that nothing herein contained shall be construed to authorize the commissioners on the Back bay to postpone or modify the operation of the fourth section of chapter one hundred and fifty-four of the acts of the year one thousand eight hundred and fifty-nine.

Streets and
drainage on the
Back bay.
Resolve.
1862, c. 96.

90. The resolve of April thirty, eighteen hundred and sixty-two, in relation to streets and drainage of the Back-bay, provides “that the commissioners on public lands be, and they hereby are, authorized to make such modifications of existing agreements in relation to the drainage of the Back-bay territory, so called, situated between the milldam and Tremont street, in Boston, as may be agreed upon by the city of Boston and all other parties to such agreements, subject to the approval of the governor and council; and they may authorize the making of such new streets and ways, and the discontinuance of such streets and ways as have already been made or provided for, on the territory of the Boston water-power company, and may connect any such streets with the streets on the commonwealth’s territory, as they may deem expedient, and upon such terms and conditions as they may determine upon, subject to the approval of the governor and council; but before proceeding to act on this resolve, the commissioners shall give public notice, by advertisement, in two newspapers published in Boston, of the time and place at which all parties having any objections to such changes, or the laying out of such streets, may be heard.”¹

SOUTH BOSTON STREETS.

Selectmen au-
thorized to lay
out streets in

91. By the third section of the one hundred and eleventh chapter of the acts of eighteen hundred and three the selectmen

¹ For acts in relation to *Western avenue* (milldam), see 1814, c. 39, 1868, c. 291; in relation to the conveyance of *Berkeley street*, see 1867, c. 338, 1873, c. 350; and City Doc. 141, for 1868; in relation to *Parker street*, known as the *Cross dam*, see 1874, c. 286.

were authorized to lay out such streets and lanes in the territory annexed by said act to the city of Boston (being the territory now known as South Boston), as in their judgment might be for the common benefit of the said proprietors and of said town of Boston; a reasonable attention being paid to the wishes of the proprietors; and in case of disagreement between the selectmen and proprietors, or either of them, the same proceedings were to be had as were provided by law in other cases for laying out town ways: *provided, only*, that no damages or compensation should be allowed to any proprietor for such streets and lanes as might be laid out within twelve months from the passing of this act; and *provided, also*, that the town of Boston should not be obliged to complete the streets laid out by their selectmen pursuant to this act sooner than they might deem it expedient to do so.¹

South Boston.
1803, c. 111, § 3.
16 Pick. 442.
3 Cush. 290.
5 Cush. 1.
12 Cush. 574.
1 Gray, 203.
14 Gray, 282.

Proviso.

ROXBURY, DORCHESTER AND OTHER STREETS.

92. The board of aldermen of the city of Boston, with the concurrence of the common council of said city, may lay out such public highways and streets in the territory formerly constituting the city of Roxbury, as they, in their judgment, shall deem to be for the common benefit of the inhabitants of said city, and pay for the land so taken; which highways and streets said city of Boston shall not be obliged to complete sooner than the board of aldermen may deem it expedient to do so.

Streets may be
laid out in Rox-
bury.
1809, c. 448, § 1.

93. The board of aldermen of the city of Boston, with the concurrence of the city council of said city, may lay out such public highways and streets in the territory formerly constituting the town of Dorchester, as they in their judgment shall deem to be for the common benefit of the inhabitants of said city, and pay for the land so taken; which highways and streets said city of Boston shall not be obliged to complete sooner than the board of aldermen may deem it expedient so to do.

City council
may lay out
streets, etc., in
territory for-
merly Dorches-
ter, and pay
for land taken.
1870, c. 79.

¹ By the third section of chap. 468 of the acts of 1855, it was provided that, in the territory set off from the town of Dorchester, and annexed to the city of Boston by said act (being the territory now known as Washington village), the mayor and aldermen might lay out such streets and lanes within twelve months from the passage of the act, as in their judgments the interests of the proprietors and the public convenience might require: *provided*, said proprietors should relinquish claims for damages or compensation.

May lay out streets, etc., in twelfth ward and South bay. 1869, c. 448, § 2.

Street commissioners may widen certain streets in Boston. 1871, c. 96.

Street commissioners of Boston may assess betterments on estates abutting on streets laid out, etc., under 1869, c. 448, 1870, c. 79, and 1871, c. 96. 1872, c. 242.

Boston may extend Atlantic avenue over

94. The board of aldermen of said city of Boston may, in like manner, with the concurrence of the city council, lay out such public highways and streets in the twelfth ward in said city [as said ward was constituted in 1870], and the territory known as South bay, as they in their judgment shall deem to be for the common benefit of the inhabitants of said city, and pay for the land so taken, which highways and streets said city of Boston shall not be obliged to complete sooner than the board of aldermen may deem it expedient to do so.

95. The board of street commissioners of the city of Boston, with the concurrence of the city council of said city, may widen, within the limits of said city, the following-named streets and highways, viz.: Beacon street westerly from Gloucester street, Brighton avenue northwesterly from its intersection with Beacon street, and Brookline avenue southwesterly from its intersection with Beacon street, to such width as they in their judgment shall deem to be for the common benefit of the inhabitants of said city, and said city shall pay for the land and property so taken; which highways and streets said city of Boston shall not be obliged to complete sooner than the city council of said city may deem it expedient so to do.

96. The board of street commissioners of the city of Boston may assess betterments on estates abutting on streets laid out, extended or widened, in said city, under the provisions of chapter four hundred and forty-eight of the acts of the year eighteen hundred and sixty-nine, chapter seventy-nine of the acts of the year eighteen hundred and seventy, chapter ninety-six of the acts of the year eighteen hundred and seventy-one [being §§ 91—94 of this digest], within one year from the time when the streets so laid out, widened or extended, are graded and opened to public travel.¹

97. The city of Boston, through its proper authorities for laying out and altering streets, is hereby authorized to lay out and

¹ For special authority to lay out a street in continuation of *Broad and Commercial streets*, see St. 1833, c. 185; in continuation of *Front street*, 1834, c. 65; in continuation of *Clinton street*, 1854, c. 408; in continuation of *Charles street*, 1835, c. 86; bridge over Roxbury creek in continuation of *Albany street*, 1855, c. 73; *Atlantic avenue*, 1867, c. 324; to lay out a street across South bay (*Swett street*), 1869, c. 78; 1874, c. 114; 1874, c. 387.

build a street or streets over tide-waters between the southerly end of Atlantic avenue at Rowe's wharf, as now laid out, following the curve in Broad street from said Rowe's wharf to Packard's or Fort-hill wharf, and from thence across the wharves and docks to Federal-street bridge on the easterly side thereof, or to such other points north of the aforesaid bridge as said authorities may determine; with liberty to widen said Federal-street bridge to a sufficient width for the additional travel over the same: *provided*, that said avenue shall be so constructed that the outer line thereof shall be at least three hundred feet distant from the commissioners' line on the northerly side of Fort Point channel.

tide-waters.
1871, c. 259.

Proviso.

98. The owners of wharves crossed by the said extension of Atlantic avenue may extend their said wharves to the commissioners' line: *provided*, they so build out within two years from the laying out of said addition to Atlantic avenue.

Owners may
extend wharves
to commission-
ers' line.
1871, c. 259.

ORDINANCES.¹

SECTION 1. The several streets in the city shall continue to be called and known by the names given to them respectively by the selectmen of the town of Boston, the mayor and aldermen of the city, or the city council, until the same may be altered by the board of aldermen.²

Streets to retain
their names till
altered.
Sept. 30, 1850.

SECT. 2. There shall be chosen annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a superintendent of streets, who shall hold his office for one year from the first Monday of

Superintendent
of streets to be
chosen.
Ibid.

¹ An ordinance in relation to streets, passed September 30, 1850, and ordinances in addition thereto, passed May 17, 1853; July 18, 1853; April 24, 1854; December 28, 1854; April 28, 1863; October 29, 1869; November 9, 1869; December 10, 1870; May 17, 1872; February 24, 1875; July 12, 1875; April 15, 1876; June 16, 1876; June 27, 1876; July 17, 1876.

² See § 87, p. 764, *ante*.

Sept. 30, 1850.

April, in the year in which he may be chosen, and until his successor is chosen and qualified, or he is removed. He may be removed at the pleasure of the city council, and a vacancy may be filled at any time for an unexpired term. He shall receive such compensation as the city council may from time to time determine.

Superintendent
to give bond.
May 17, 1853.

SECT. 3. The superintendent of streets shall give bond, with one or more sureties, to the approbation of the board of aldermen, with condition that he shall faithfully perform all the duties of his office, and account for all moneys entrusted to him, and that he will not, directly or indirectly, for himself or others, or by others in trust for him, or on his account, have any interest or concern in any purchase, lease, contract, or agreement, made in pursuance of this ordinance.¹

The superin-
tendent may ap-
point assistants.
Oct. 29, 1869.

SECT. 4. The said superintendent is authorized, with the approval of the board of aldermen, to appoint such assistants as he may deem necessary; said assistants shall act under his control and direction, and receive such compensation as the city council may from time to time determine. The said assistants may be removed at any time by the said superintendent, or the board of aldermen.

Superintendent
to attend at his
office. To keep
record and
books, etc.

SECT. 5. The said superintendent shall attend at his office a portion of each day. He shall keep a record of all his proceedings, and a set of books, in

¹ See "Contracts with City Officers," *ante*, p. 205.

which shall be entered, under appropriate heads, the receipts and expenditures in his department, with the names of all persons who have furnished materials, and of all workmen, and the amount paid to each individual; and he shall make a quarterly report thereof to the city council. On or before the tenth day of January, annually, he shall make a report to the city council, containing a general statement of the expenses of his department during the preceding year, the amount expended on the various streets, and such other information as he may consider desirable, together with an estimate, in detail, of the property under his charge belonging to the city.

Sept. 30, 1850.

To make reports.

SECT. 6. It shall be the duty of the said superintendent, under the direction and control of the board of aldermen, to superintend the general state of the streets; to attend to the laying out, widening, elevation, and repairs of the same, and to make all contracts for the supply of labor and materials therefor; to give notice to the mayor, or the chief of police, of any nuisance, obstruction, or encroachment thereon. And the city shall not be responsible for any of his doings that have not been ordered by the city council, or the board of aldermen, or sanctioned by express vote.¹

To superintend streets, etc.
Ibid.

City not responsible for his acts, unless, etc.

SECT. 7. All notices of defects, or want of repair, in public streets or places, received by any officer or person in the employ of the city, shall be sent to the

Notices of defects.
Dec. 10, 1870.

¹ The superintendent cannot bind the city for work done outside of his official powers. 112 Mass. 512.

Dec. 10, 1870.

office of the superintendent of streets, at the city hall; and said superintendent, or some competent person detailed by him, shall examine the defect without delay. If it appears from such examination that the defect is of such a character as to endanger the safety of public travel, and that the city is liable for its repair, it shall be immediately repaired by said superintendent; and until such repairs are made, he shall do whatever is necessary for the safety of the public travel.

Repairs of defects, etc.
Ibid.

SECT. 8. Whenever an opening is made in any public street, or place, for any purpose, by any department of the city government, the street or place shall be restored to a condition entirely satisfactory to the superintendent of streets, as soon as the purpose for which the opening was made has been accomplished. And in case the street is not restored to a satisfactory condition, although not dangerous to public travel, the said superintendent shall notify the department responsible therefor, to make the necessary improvement forthwith; and, if said department neglects so to do, the said superintendent shall make such repairs as he deems necessary, and charge said department for the same.

To make bills for things sold, etc.
July 18, 1853.

SECT. 9. Whenever the superintendent of streets shall sell any articles or materials belonging to the city, or shall do, or cause to be done, any work for any individual for which money shall be due to the city, he shall enter, in books kept for that purpose, all such sales and work done, with the price thereof,

and shall forthwith make out bills for the same, and deliver them to the city collector for collection; and the city collector shall forthwith demand payment of the said bills; and if any bills or dues under this ordinance remain unpaid at the expiration of three months after demand for payment as aforesaid, the city collector shall cause the same to be collected by legal process: *provided, however*, that when, in the opinion of the mayor, the interests of the city demand it, he may at any time order legal proceedings to be begun.

July 18, 1853.

Collection of same.

SECT. 10. The pay-rolls of the laborers employed under the direction of the superintendent of streets shall be made up and certified by the said superintendent, and upon being duly allowed and audited shall be paid by the city treasurer, at such times and places as he may appoint, and he may employ a clerk for that purpose.

To make up pay-rolls.
Ibid.

SECT. 11. No person or persons shall break or dig up, or assist in breaking or digging up, any part of any street, or remove any gravel or other similar thing therefrom, without having first obtained the license of the board of aldermen, in writing, for that purpose.¹

Streets not to be dug up, etc.
Sept. 30, 1850.

¹ By Gen. Sts. c. 48, § 8, it is provided that whoever digs or breaks up the ground in any highway, street, or lane in any town, for the laying, altering, or repairing of any drain or common sewer, without the consent of the selectmen in writing, shall forfeit the sum of five dollars for each offence, to the use of the town, to be recovered by the treasurer thereof. For authority of gas-light companies to open streets, see § 88, p. 765, *ante*.

Persons so digging to repair the same, etc.
Sept. 30, 1850.

SECT. 12. Whosoever shall, by virtue of such license, break or dig up, or cause to be dug or broken up, any part of any street, shall, within such time as the board of aldermen, or some person by them authorized,¹ may order, cause the same to be repaired and amended, to the satisfaction of the said board, under a penalty of not less than five dollars, nor more than fifty dollars, for each and every day he or they shall neglect or refuse so to do after such order.²

When drain or aqueduct is repaired, a fence and lights to be put up.
Ibid.
See § 40.
109 Mass. 126.
112 Mass. 43.

SECT. 13. When any drain, or aqueduct, is opened, or laid, or any aperture is made in any street, the person or persons, or either of them, by or for whom the said drain or aqueduct is opened or laid, or such aperture made, shall cause a rail, or other sufficient fence, to be placed and fixed so as to enclose such drain, aqueduct, or other aperture, and the dirt, gravel, or other material thrown into the street; and such fence shall be continued during the whole time such drain, aqueduct, or aperture shall be open. And a lighted lantern, or some other proper and sufficient light, shall be fixed to some part of such fence, or in some other proper manner over or near such open drain, aqueduct, or aperture, and the dirt, gravel, or other material taken from the same, and so kept from the beginning of twilight every evening through the whole of every night during all the time

¹ The superintendent of streets is annually authorized to issue permits under this section.

² For authority granted to street railway corporations to locate their tracks in the streets of this city, see volume entitled "Boston Street Railways," published in 1869, which contains the charters and locations of the several street railway corporations in the city of Boston.

such drain, aqueduct, or aperture may be open, or in a state of repair. Sept. 30, 1850.

SECT. 14. Every person wishing to occupy or use any portion of any of the streets for the erection or repair of any building upon land abutting thereon, shall make application therefor to the chief of police, or the deputy chief of police, either of whom, subject to the direction of the board of aldermen, shall have power and authority to grant permits for the occupation or use, for building purposes, of such part of any street, and for such length of time, and under such limitations and restrictions, as may be required by any ordinance, or by the public convenience; and all such permits may be revoked by the chief of police, or deputy chief of police, at any time, when the holders of them fail to comply with any rule or regulation under which they are granted, or when, in the opinion of the chief of police, or the deputy chief of police, the public good requires such revocation.¹ And the part or portion so allotted, if any, and no other part of such street, shall be used for laying all the materials for any such building or repairing, and for receiving the rubbish arising therefrom. And all the rubbish arising therefrom or thereby shall be carried away by the person or persons so building or repairing, at such convenient time as the board of

Persons building to obtain permits.
Dec. 1, 1868.
103 Mass. 580.

Regulations in such case.
Sept. 30, 1850.

¹ The following rules are incorporated into the permits granted by the chief of police:—

1. The covers of *hydrants* must be kept clear of all building materials or rubbish, and easy access to such hydrants from the roadway must be provided.

2. If brick, stone, or other building materials are placed within the allotted space, they must be so placed as to allow the free passage of water in the gutter underneath the same.

Sept. 30, 1850. aldermen, the chief of police, or the deputy chief of police, may direct; and in case of neglect or refusal so to do, it shall be removed by the superintendent of streets, the chief of police, or the deputy chief of police, at the expense of such person or persons. And, in all cases, the portion so allotted shall be enclosed and lighted as prescribed in the preceding section.

Placing coal or firewood in streets, regulated.
Ibid.

SECT. 15. Neither the purchaser nor seller of any coal or firewood shall place or permit any such coal or firewood to remain in any street more than thirty minutes after sunset in the evening; nor shall any greater quantity than two loads of such wood or coal, in any case, be permitted, either by the purchaser or seller, or other person having the charge thereof, to lie or continue in any street. Nor shall any purchaser, or seller, or other person as aforesaid, permit any such wood or coal, at any time, by day or night, to remain in any street, so as to obstruct the passage in the same, nor more than two hours in any case.

Playing ball, throwing stones and snowballs.
May 17, 1872.

SECT. 16. No person shall play at ball, or throw stones or snowballs or other missiles in any street, court, lane or alley; or throw stones or other missiles on the common or public garden, or in any of the public squares.

Sidewalks not to be obstructed by show-boards, etc.
April 15, 1876.

SECT. 17. No person, unless authorized by the board of aldermen, shall place or carry, or cause to be placed or carried, on the sidewalk of any street, any

show-board, placard or sign, for the purpose of there displaying or attracting attention to the same. Any person offending against the provisions of this ordinance shall be liable to a penalty of not less than five nor more than twenty dollars for each offence. April 15, 1876.

SECT. 18. No person shall shoot with, or use a bow and arrow, in any street, or public square, or on the common. Shooting with bow and arrow forbidden. Sept. 30, 1850.

SECT. 19. No person shall expose, in any street, or public square, or on the common, any table or device of any kind whatsoever, intended for playing any game of hazard or chance; and no person shall play at any such table or device, or at any unlawful game, in any street or public square, or on the common. Exposing gaming tables. Ibid.

SECT. 20. No person shall course or coast upon a sled in any street. Coasting upon sleds. Ibid. See p. 764.

SECT. 21. No person shall swim or bathe in the waters surrounding the city adjacent to any of the wharves, bridges, avenues, or railroads leading into the same, so as to be exposed to the view of the spectators. Bathing in waters surrounding the city. Ibid.

SECT. 22. No person shall take or remove any street dirt or manure, collected from any street, without the license of the board of aldermen first obtained.¹ Taking street dirt without license. Ibid.

¹ See "Health," *ante*, §§ 60-61, p. 427.

Obstructing
street by moving
buildings.
Sept. 30, 1850.

SECT. 23. No person shall obstruct any street, or any part thereof, by placing therein any house, barn, shop, or other building; and no person shall remove or draw, through or upon any street, any house, barn, shop, or other building, without the permission of the board of aldermen.¹ Any person offending against either of the provisions of this section, and any person who shall aid and assist in so offending, shall be liable to a penalty of not less than ten nor more than fifty dollars, and a like sum for every twelve hours that the said obstruction may continue, or that the said house, barn, shop, or other building may remain in or upon any street.

Suspending
goods so as to
project into
street.
Ibid.

SECT. 24. No person shall place, or cause to be placed, or suspend, or cause to be suspended, from any house, shop, store, lot, or place over any street, any goods, wares, or merchandise whatsoever, or any other thing, so that the same shall extend or project from the wall or front of said house, store, shop, lot, or place, more than one foot towards or into the street.

Awnings,
shades, etc., not
to obscure
lamps.
June 16, 1876.
12 Gray, 161.
68 Mass. 531.

SECT. 25. No canopy, awning, shade, shade-frame or shade-curtain shall hereafter be erected or placed within the limits of any street, unless permission therefor shall have been first obtained in writing from the superintendent of lamps, who is hereby authorized to give such permits, when, in his opinion,

¹ See the case of *Pike vs. Brimmer*, 9 Law Reporter, 221. This power cannot be delegated by the board of aldermen. 4 Cush. 431. See rules in relation to moving buildings, *post.*, p. 797.

the public safety and convenience, and the proper June 16, 1876. lighting of the streets will not thereby be interfered with: *provided*, however, that all permits for shade-frames shall be limited to frames so constructed that they can be folded up against the buildings to which they may be affixed. The board of aldermen may order the immediate removal of any canopy, awning, shade, shade-frame or shade-curtain, which is now, or hereafter may be, erected or placed within the limits of any public street of the city. Any person or persons who shall erect or maintain any canopy, awning, shade, shade-frame or shade curtain, contrary to the provisions of this section, shall forfeit and pay the sum of two dollars for each and every day on which such canopy, awning, shade, shade-frame or shade-curtain shall be so maintained.¹

SECT. 26. No person shall hang, affix, erect or fasten, any sign, show-bill, lantern or show-board of any description whatsoever, which shall project into or over any street more than one foot, without first obtaining the permission of the board of aldermen therefor, which license or permission shall be subject to revocation by said board at pleasure; and any person who hangs, affixes, erects, or fastens any sign, show-bill, lantern, or show-board of any description whatsoever, without such license or permission, and

Signs, show-bills or lanterns not to project into the street. Oct. 23, 1869. 104 Mass. 75. 110 Mass. 514.

¹ Under an order of surveyors of highways in a city, who have all the powers of surveyors of highways in towns, and by direction of the mayor, who is their chairman, the chief of police may lawfully remove an awning maintained over a sidewalk in violation of a city ordinance which forbids awnings to be kept over sidewalks during certain months, and imposes a penalty for its violation. 98 Mass. 581.

Oct. 29, 1869.

neglects to remove the same, after notice given by the mayor, or any alderman or police officer, shall be liable to a penalty of not less than five dollars nor more than twenty dollars, for every day that said sign, show-bill, lantern, or show-board may remain after notice to remove the same as aforesaid. All signs, show-bills, lanterns, or show-boards of any description whatsoever, projecting into or over any street more than one foot, which may have been hung, affixed, erected or fastened at the passage of this ordinance, shall be removed forthwith, upon the order of the board of aldermen, unless a license or permission be obtained from the board allowing them to remain; and any person who neglects to remove any sign, show-bill, lantern, or show-board belonging to him, which projects in the manner aforesaid, upon the said order of the board of aldermen, shall be liable to a penalty of not less than five dollars nor more than twenty dollars, for every day that said sign, show-bill, lantern, or show-board may remain after said order to remove the same.

Same subject.
Sept. 30, 1850.

SECT. 27. No sign, show-bill, lantern, show-board, or other thing, which, at its lowest part, is less than nine feet in height above the sidewalk or street, shall project into any street more than six inches, under a penalty of not less than four nor more than fifty dollars, for each offence, and the like penalty for every day such sign, show-bill, lantern, show-board, or other thing, may be continued after an order to remove the same, given by the board of aldermen, or any person authorized by them.

SECT. 28. No person, unless duly licensed by the board of aldermen, shall ring, or cause to be rung, any bell, or use or cause to be used, any horn or other instrument, in any street, to give notice of the exercise of any business or calling, or for the sale of any article.

Ringling bells or blowing horns.
Sept. 30, 1850.

SECT. 29. No person shall stand in any street for the purpose of grinding cutlery, or for the sale of any article, or for the exercise of any other business or calling, unless duly licensed by the board of aldermen.¹

Standing to grind cutlery, or sell goods, etc.
Ibid.

SECT. 30. No person shall construct or place, or cause to be constructed or placed, any portico, porch, door, window or step, projecting into any street, under a penalty of not less than four nor more than fifty dollars for each offence, and a like penalty for every day that the said portico, porch, door, window, or step may be continued as aforesaid, after notice to remove the same from the board of aldermen, or some person authorized by them.²

Projecting porches, doors, windows, steps, etc.
Ibid.
117 Mass. 114.
115 Mass. 216.

SECT. 31. No person shall affix or place, or cause to be affixed or placed, or continue in any street, any

Gratings in streets, how licensed and

¹ See report on street pedlars, made to the board of aldermen in 1874.

² The ordinance of the city of Boston, passed Sept. 30, 1850, prohibiting all projections of bay-windows into the street, is not inconsistent with the statute of 1799, c. 31, by which only bay-windows projecting more than one foot are prohibited, and is a valid exercise of the powers conferred on all cities in the commonwealth by the statute of 1848, c. 278 (Gen. Sts., c. 19, § 13), and upon the city of Boston by the statute of 1854, c. 448, § 35 (*i. e.* city charter). 117 Mass. 114. This statute and ordinance are intended for the benefit of the public, and do not confer distinct rights on individual citizens or owners of property. 115 Mass. 217.

constructed.
Sept. 30, 1860.
April 23, 1863.
See rules, etc.,
p. 793.

grating, without the license of the board of aldermen; and no grating shall be placed in any sidewalk, the spaces between the bars of which may be more than one inch and a quarter in width; and no grating shall project more than eighteen inches into the street.

Cellar-doors,
door-ways and
steps not al-
lowed without
license.
April 23, 1863.

SECT. 32. No person shall construct or maintain any cellar-door or cellar-doorway in any sidewalk, or projecting into any street, or construct any entrance or flight of steps descending immediately from any street into any cellar or basement story of any building, for the purpose of being kept open as an entrance, without a license from the board of aldermen. And all such cellar-doors, doorways, and steps, shall be constructed in such manner as said board may direct.

Not to remain
open, unless,
etc.
Ibid.

SECT. 33. No occupant or other person having the care of any building shall suffer any cellar-door, or cellar-door-way, or entrance, or flight of steps mentioned in the preceding section, to remain open, or the platform thereof to be removed, more than fifteen minutes during any part of the night-time, and when so removed during the night-time the same shall be properly lighted; or for more than two hours in all during the daytime, unless licensed so to do by the board of aldermen; and in all cases in which any such cellar-door or cellar-doorway, or entrance or flight of steps may be open, the same shall be properly guarded.

Steps descend-
ing from streets
to be enclosed
and lighted.

SECT. 34. Every entrance or flight of steps, descending immediately from or near the line of any

street, into any cellar or basement story of any building where such entrance or flight of steps is not safely and securely covered, shall be enclosed with a permanent railing on each side, at least three feet high from the top of the sidewalk or pavement, together with either a gate to open inwardly, or two iron chains across the front of the entrance-way, one near the top, and the other half way from the ground to the top of the railing; and such gate or chains shall, unless there be a burning light over the steps to prevent accidents, be closed during the night.

SECT. 35. No person shall make, or cause to be made, any excavation or aperture in any street, for any purpose whatsoever, without a license from the board of aldermen, or from some person authorized by them, on such terms as they may prescribe. Every application for a license under this section shall be made in writing and signed by the applicant, and shall set forth the dimensions of the proposed excavation or aperture, and the purpose for which it is to be used; and every such license shall provide that such excavation or aperture shall not be used for any other purpose than that stated in the application; and such license may at any time be revoked by the board of aldermen.

Excavations and apertures in street.
Ibid.
See rules, etc., post.

SECT. 36. No person shall make, or cause to be made, any excavation, the inner face wall of which extends further under the street than to a line eighteen inches inside the line of the outer edge of the curbstone.

Excavation not to extend under street more than, etc.
Ibid.

Coverings of
coal-holes, exca-
vations, and
apertures.
April 23, 1863.

SECT. 37. All coverings of coal-holes, excavations, or apertures, in any street, or the sidewalks thereof, excepting cellar door-ways and bulkheads, shall be constructed of iron, or of iron and glass, North river flagging-stone or rough surface granite; and shall be of such description and workmanship as the board of aldermen may direct. Whenever any such covering is constructed otherwise, or is, in the opinion of said board, unsafe or inconvenient for the public travel, said board may order the same to be removed, and a suitable one put in its place; and if the same is not done within ten days from the service of said order on the owner or tenant of the premises, or other person having the care thereof, the superintendent of streets shall make such change, and the expense thereof shall be paid by such owner, tenant, or other person having the care of the premises; and no person shall leave such coal-hole, excavation, or aperture open or unfastened after sunset, nor in the daytime, unless while in use by some person or persons actually attending the same.

Coal-holes and
gratings may be
authorized, etc.
Sept. 30, 1850.
See rules, etc.,
post.

SECT. 38. The board of aldermen, upon the application of any person, may authorize the construction of coal-holes or other apertures, and gratings, as hereinbefore mentioned, in such manner and under the direction of such person, as they may deem suitable, at the expense of the applicant; and they may also authorize the continuance of any grating already constructed: *provided*, that in no case shall any grating be authorized to extend more than eighteen inches into the street.

SECT. 39. No person shall insert in any sidewalk any sign, without the permission of the board of aldermen, or of some person authorized by them.

No signs in sidewalks, unless.
etc.
April 23, 1863.

SECT. 40. Any person licensed or permitted by the board of aldermen, or by some person authorized by them, to occupy any part of the highway while erecting or repairing any building, opening any sewer or drain, making any excavation, or for any other purpose, shall provide a safe and convenient passage around or over the same for public travel, and shall be responsible to the city for any injury sustained in consequence of any neglect so to do. And any such person or others occupying any part of the highway as aforesaid, or removing therefrom any gravel or other materials, shall, when requested by the superintendent of streets, or any police officer, exhibit his license or permit for such occupation or removal.

Safe passage around or over apertures or structures to be provided.
Ibid.
108 Mass. 580.

Responsibility for injuries.

License to be shown on request.

SECT. 41. No owner, or person, having for the time being, the charge or use of any swine, horse, ox, or other grazing animal, shall bait or feed the same in any street.¹

Feeding horses or animals in the streets forbidden.
Sept. 30, 1850.

SECT. 42. No owner or other person, having for the time being the care or use of any horse or other beast of burthen, carriage or draught, shall ride, drive or permit the horse or other beast to go at a greater rate of speed than seven miles an hour in any of the public streets or ways in this city, except those

Rate of speed regulated.
June 27, 1876.
See § 36, p. 173.

¹ For regulation of aldermen in relation to baiting horses in streets, see p. 177, § 45, *ante*. For ordinance prohibiting the washing of carriages in the public streets, see "Health," *ante*, p. 427, § 60.

June 27, 1876.

included within the limits of wards numbered twenty-two, twenty-three, twenty-four, and twenty-five, and in that part of ward fifteen lying south of the line of Swett street extended. No owner or other person, having for the time being the care or use of any horse or other beast of burden, carriage, or draught, shall ride, drive or permit the horse or other beast to go at a greater rate of speed than twelve miles an hour in any of the public streets or ways included within the limits of wards numbered twenty-two, twenty-three, twenty-four, and twenty-five, and in that part of ward fifteen lying south of the line of Swett street extended. Any person violating any provision of this section shall be liable to a penalty of not less than five nor more than fifty dollars.

Nov. 29, 1876.

Horses, kine,
swine, etc., not
to go at large.
Sept. 30, 1850.

SECT. 43. No owner, or person having the charge of any horse, cow, swine, sheep, goat, or other grazing animal, shall turn or permit the same to go at large or loose into or in any street.

Cattle, sheep
and swine not to
be driven in cer-
tain streets.
July 17, 1876.
114 Mass. 466.
See p. 764.

SECT. 44. No person shall drive sheep, swine, or neat cattle through or over any public street, way, causeway or bridge within the city of Boston, except in wards twenty-three, twenty-four, and twenty-five, in said city, without written permission from the board of aldermen or the chief of police. Any person violating any of the provisions of this section shall be liable to a penalty of not less than five dollars nor more than fifty dollars for each offence.

No person to
water streets,
etc., without
license.
April 24, 1854.

SECT. 45. No person shall water any street, lane, alley, court, common, or public square, within the city of Boston, by or with a watering-cart, without having first obtained a license therefor from the board of aldermen.

SECT. 46. All licenses granted by the board of aldermen to any person to water streets, shall run for not more than one year, and shall contain such conditions and restrictions as the board of aldermen may prescribe, and shall also be subject to such rules and regulations as the said board of aldermen may from time to time prescribe.¹

License to run
not more than a
year.
Ibid.
April 24, 1854.

SIDEWALKS.

SECT. 47. The surveyors of highways² are hereby empowered so to regulate the width and height of the sidewalks of any streets, as may, in their judgment, be most conducive to the convenience and interest of the city, and they may accept such sidewalks, after they have been put in good and perfect repair by the abutters on such streets, and after they have been relinquished in writing to the said city by such abutters.³

Surveyors of
highways (al-
dermen) to regu-
late the width
and height of
sidewalks.
May accept the
same.
Sept. 30, 1850.

SECT. 48. After such relinquishment and acceptance, such sidewalks shall be maintained at the expense of the city: *provided*, that when any sidewalk may require repairs, in consequence of any defect in the cellar-door, curb, step, or steps, cellar-window, coal-hole, cellar-wall, or from any other cause within the control of the owner or occupant of the estate to which such sidewalk adjoins, then,

After accept-
ance, etc., side-
walks to be
maintained by
the city, pro-
vided, etc.

¹ See "Rules and Regulations," May 1, 1854.

² The board of aldermen are the surveyors of highways. See "Charter," § 41, p. 16, *ante*.

³ See St. 1833, c. 128, *ante*, p. 758, § 71. But see *Bacon vs. City of Boston*, 3 Cush. 174; *City of Lowell vs. French*, 6 Cush. 223.

Sept. 30, 1850

and in that case, such repairs shall be made at the expense of such owner or occupant.

City clerk to
keep record of
names of streets
and acceptance
of sidewalks.
Ibid.

SECT. 49. The city clerk shall keep a book in which the names of the streets shall be alphabetically arranged, and in which all the sidewalks which now are, or may hereafter be, accepted as aforesaid, shall be entered, with the date of such acceptance, the length and width of such sidewalk, and the names of the owners of the estate to which it belongs, and of the owner or owners of the adjoining estates.

Carriages for-
bidden on side-
walks, except,
etc.
Ibid.

SECT. 50. No person shall drive, wheel, or draw any coach, cart, handcart, hand-barrow, or other carriage of burden or pleasure, whether of the same description or not, except children's hand-carriages, containing children only, and drawn by hand, or drive, or permit any horse under his care to go or stand upon any footpath or sidewalk in the city.

Sawing or plac-
ing firewood on
sidewalks.
Ibid.

SECT. 51. No person shall saw any firewood, or place the same, upon the footpath or sidewalk of any street, and no person shall stand on any such footpath or sidewalk, with his wood-saw or horse.

Standing in a
group, so as to
obstruct the
passage.
Ibid.

SECT. 52. Three or more persons shall not stand in a group, or near to each other, on any sidewalk, in such a manner as to obstruct a free passage for foot passengers, for a longer time than twenty minutes, under a penalty of not less than three, nor more than fifty dollars; nor more than five minutes after a request to move on, made by the mayor, or any police officer, under a like penalty.

SECT. 53. No person shall place, or cause to be placed, upon any footpath or sidewalk, street or highway, in the city, any lumber, iron, coal, trunk, bale, box, crate, cask, package, building material, rubbish, or article or thing whatsoever, whether of the same description or not, for more than five minutes, under a penalty of not less than three, nor more than fifty dollars; and if such person shall suffer the same to remain more than one hour after being first placed there, or more than ten minutes after notice to remove the same, given by the mayor, by any alderman, or by any policeman, the person or persons so offending shall be liable to a penalty of not less than five dollars, nor more than ten dollars, for every such offence; and for each and every hour thereafter, that the same shall be suffered to remain, the person or persons so offending shall be liable to a penalty of not less than five nor more than fifty dollars: *provided*, that nothing contained in this section shall be deemed to extend to such goods, wares, or merchandise as may, in conformity with all rules, regulations, and orders, made by the board of aldermen upon the subject, be placed in any street, lane, court, alley, square, or place, for the purpose of being sold at public auction.

Placing, lumber, bales, etc., on sidewalks. Ibid. Oct. 29, 1869.

Penalty.

SECT. 54. The tenant, occupant, or any person having the care of any building or lot of land, bordering on any street, lane, court, square, or public place within the city, where there is any footway or sidewalk, and in case there may be no tenant, occupant, or other person having the care of the whole

Snow to be removed fr'm sidewalks. Parties liable for negl't. Ibid. Nov. 9, 1869. 16 Pick. 504. 14 Gray, 249. 12 Allen, 568, 571.

97 Mass. 562.

101 Mass. 251.

See p. 129, § 115.

of any such building or lot, the owner thereof shall, within one hour after any snow ceases to fall in the daytime, and before nine o'clock the next morning after any fall of snow during the night, cause the same to be removed therefrom; and, if he fails to do so, he shall forfeit and pay a sum of not less than two dollars, nor more than ten dollars; and for each and every hour thereafter that the same may remain on such footway or sidewalk, such tenant, occupant, owner, or other person, shall forfeit and pay a sum of not less than one dollar, nor more than ten dollars. The provisions of this section shall also apply to the falling of snow from any building.¹

Icy sidewalks to be covered with sand or other suitable material.

Oct. 29, 1869.

Feb. 24, 1875.

SECT. 55. Whenever the sidewalk, or any part thereof, adjoining any building or lot of land, on any street is encumbered with ice, it shall be the duty of the occupants, and, in case there is no occupant of the whole of said building or lot of land, it shall be the duty of the owner, or any person having the care of the same, to cause such sidewalk to be made safe and convenient, by removing the ice therefrom, or by keeping the same covered with sand, or some other suitable substance; and, in case such occupant, owner or other person, shall neglect so to do for the space of six hours during the daytime, he shall forfeit and pay a sum of not less than two nor more than five dollars,

¹The owner of a building is liable for injuries resulting from obstructions caused or created by him in the adjoining sidewalk; but not for injuries resulting from defects in the sidewalk, or from accumulations by natural causes of snow and ice thereon, although the sidewalk forms part of the highway, and he is obliged by the ordinances of the city to keep the sidewalk clear and in good repair. 14 Gray, 249.

and a like sum for each and every succeeding day that the same may continue to be so encumbered.

Oct. 29, 1869.
Feb. 24, 1875.

SECT. 56. The owner or person having the care of any tenement house or other building used or occupied by more than one tenant, bordering on any street, lane, court, square or public place within the city, where there is a foot-way or sidewalk, shall cause the snow and ice to be removed from such foot-way or sidewalk, as provided in sections fifty-four and fifty-five of the city ordinances relating to streets, and shall be subject to the same penalties for default thereof as are therein provided.¹

Owner of tenement houses to keep sidewalk clear of snow and ice.
July 12, 1875.

SECT. 57. Every person who shall lay, throw, or place, or cause to be laid, thrown, or placed, any ice or snow into any street within the city, shall cause the same to be broken into small pieces, and spread evenly on the surface of such street, and in default thereof shall be liable to a penalty of not less than two dollars nor more than five dollars for every offence.

Ice or snow thrown into street, to be broken up, etc.
Sept. 30, 1850.

Penalty.

SECT. 58. Whenever the word "street" or "streets" is mentioned in this ordinance, it shall be understood as including alleys, lanes, courts, public squares, and public places; and it shall also be understood as including the sidewalks, unless the

Meaning of the word "street" defined.
Ibid.

¹The owner of a building, leased in several tenements, who is bound to make all necessary repairs, and has control of the passage-ways and doors for that purpose, and who keeps the keys and opens and closes the doors of portions of the building at times fixed by the occupants, is not relieved from liability for injuries caused by defects in the building or by falling of snow and ice therefrom. 14 Gray, 249.

Sept. 30, 1850.

contrary is expressed, or such construction would be inconsistent with the manifest intent of the city council.

Who shall be
liable to pen-
alties.
Ibid.

SECT. 59. Whenever anything is prohibited in this or any other ordinance, the person actually doing such prohibited thing, as well as his agent or employer, shall be liable to the penalty prescribed.

Acts forbidden
to be done with-
out license may
be licensed.
Ibid.

SECT. 60. Whenever, in this or any other ordinance, anything is prohibited from being done without the permission or license of any officers or board, such officers or board shall have the power to permit or license such thing to be done.

Rights and du-
ties of surveyors
of highways not
limited by this
ordinance.
Ibid.

SECT. 61. The foregoing provisions shall not be taken or construed as limiting in any manner the legal rights and duties of the surveyors of highways to make any alterations and repairs in the streets, which they may deem the safety and convenience of the inhabitants to require.

Penalties.
Ibid.

SECT. 62. Any person violating any of the provisions of this ordinance, except where a different penalty is otherwise specially provided in any section thereof, shall be liable to a penalty of not less than two nor more than fifty dollars for each offence, and to a like penalty for each day's continuance thereof.

RULES AND REGULATIONS.

COAL-HOLES AND VAULTS UNDER SIDEWALKS.¹

SECTION 1. The superintendent of streets is hereby authorized to issue permits for the purpose of making excavations or apertures in any street, or under the sidewalks thereof, as required by the ordinance in relation to streets, passed April twenty-eight, eighteen hundred and sixty-three, upon the following conditions, viz.:—

The superintendent of streets may grant permits for excavations.
Oct. 19, 1863.

All coal-holes or vaults of any description that may hereafter be made under the sidewalks in the city of Boston shall be constructed as follows: The outer wall next to the carriageway or roadway shall be formed of heavy granite, of not less than two and one-half feet in thickness, and shall be laid with good cement; and no part thereof shall project beyond the edgestone. The sides of such vaults shall be at least one foot thick, and be composed of good hard bricks or granite blocks, laid in cement mortar. The top of the coal-hole or vault shall be formed either by a brick arch or arches, turned over said coal-hole or vault, in a good and substantial manner, or by covering said coal-hole or vault with rough hammered granite, at least one foot thick, or blue stone, or North river flag-stone, at least six inches thick, or iron and glass, or rough surface iron, similar in character to the "Hyatt Light," as it is called. Each coal-hole or vault thus constructed

How coal-holes, etc., shall be made, and of what material, etc.
Ibid.
May 29, 1871.

¹ Rules and regulations in relation to the construction of coal-holes, vaults, etc., under the sidewalks, passed by the board of aldermen, October 19, 1863, amended May 29, 1871.

Depth of coal-hole and vault-covering, etc.
Oct. 19, 1863.

shall not exceed eleven feet in depth, measuring from the top of the sidewalk. The aperture in the sidewalk over said coal-hole or vault shall not exceed eighteen inches in diameter, and shall be covered with a substantial iron plate, with a rough surface, to prevent accidents. The entire construction of said coal-holes or vaults shall be subject to the directions and supervision of the superintendent of streets, or such other person as the board of aldermen may designate. Coal slides are permitted to be placed in the sidewalks, and shall be constructed of at least eight-inch brick walls laid in good cement mortar, and the whole covered as before mentioned.

Coal-slides permitted; how constructed.

Owner, etc., responsible for all damages; shall keep vaults, etc., in repair.
Ibid.

SECT. 2. The owner and tenant of the abutting estate, in front of which the coal-hole or vault is thus permitted to be constructed, shall be held responsible to the city for any and all damages to persons or property in consequence of any defect in the construction of such vault or coal-hole, or for allowing the same, or any portion thereof, to remain out of repair; and such owner and tenant shall be required to keep the said vault or coal-hole, its walls and coverings, in good order at all times.

Occupants liable for all damages by leaving aperture uncovered, etc.
Ibid.

SECT. 3. The occupant of any estate abutting on such a vault or coal-hole shall be held responsible to the city for any and all damages occasioned to persons or property in consequence of the aperture in the sidewalk being left exposed and uncovered, or from the covering thereof being left insecure or unfastened; and said occupant shall be required to keep

such coal-hole or vault-cover in good order, and safe for public travel over the same. Oct. 19, 1863.

SECT. 4. No boiler, steam-shaft, furnace, or steam-pipe, no cesspool, privy, or water-closet shall be constructed or located for use, and no explosive substance or inflammable oil shall be stored, and any sidewalk in this city, and no excavations, when permitted, shall be ventilated into the street. Boilers, furnaces, privies, etc., not to be located for use, or any explosive, etc., substance, stored under any sidewalk. Ibid.

SECT. 5. Any excavation under the sidewalk, whether licensed or not, shall be closed and filled up at the owner's expense, after one week's notice to that effect given by the board of aldermen. Excavations to be filled up by owner, etc. Ibid.

SECT. 6. Whenever any coal-hole or vault, under any sidewalk, or any aperture constructed therein, is not covered or secured as provided in section one, or, in the opinion of the board of aldermen, is unsafe or inconvenient for the public travel, said board may order the same to be removed, and a suitable one put in its place; and if the same shall not be done within ten days from the service of said order on the owner or tenant of the premises, or other person having the care thereof, the superintendent of streets shall make such change, and the expense thereof shall be paid by such owner, tenant, or other person having the care of the premises; and no person shall leave such coal-hole, excavation or aperture open or unfastened after sunset, nor in the daytime, unless while in use by some person or persons actually attending the same. When coal-hole, etc., is unsafe, aldermen may order its removal, etc.; if not done by owner, city may do it, etc. Ibid.

Not to be left uncovered, except, etc.

Applications for permit to be in writing; excavation not to be used for other purposes than those asked for. Oct. 19, 1863.

Applicants to perform conditions required.

SECT. 7. Every application for a permit shall be made in writing, and signed by the applicant, and shall set forth the dimensions of the proposed excavation or aperture, and the purpose for which it is to be used; and such excavation or aperture shall not be used for any other purpose than that stated in the application, without the consent of the committee on paving and the superintendent of streets; and such permit may at any time be revoked by the board of aldermen. Every applicant shall be required to sign an agreement to conform, on his part, to all the provisions and requirements of the foregoing conditions. Said conditions shall be printed upon each permit which is issued, and any violation of the same shall work a forfeiture of the privilege thus granted, and the board of aldermen shall cause said privilege to be revoked accordingly.

Chief of police to prosecute for disturbing sidewalks without permit. Ibid.

SECT. 8. The chief of police is hereby directed to prosecute all persons who shall open or disturb any sidewalk of this city, without having a permit for that purpose as provided in the ordinance relating to streets, passed April twenty-eight, eighteen hundred and sixty-three.

USE OF HOISTING BEAMS.¹

Rules for use of hoisting beams. Jan. 19, 1874.

Ordered: That the following regulations be adopted for the government of persons who may be licensed to raise or lower goods and merchandise outside of buildings in the streets of this city: —

¹ Rules for the use of hoisting beams projecting into the public streets, passed by the board of aldermen, Jan. 19, 1874.

SECTION 1. Good and sufficient barriers shall be placed across the sidewalk, from the wall of the building to the curbstone of the sidewalk, on each side of the goods or merchandise so raised or lowered, and kept in their places during the whole time the work of raising or lowering is in progress, so as to protect travellers from injury or danger.

Barriers to be placed across sidewalk.
Jan. 19, 1874.

SECT. 2. The sidewalk shall not be encumbered by such goods or merchandise, or the raising or lowering thereof, longer than fifteen minutes at any one time.

Walks not to be encumbered.

SECT. 3. The person or persons licensed to raise or lower goods outside of buildings shall indemnify and save harmless the city of Boston against all damages, costs and expenses, to which it shall be subjected on account of the acts of said person or persons under such license.

Licensee to save city harmless.

SECT. 4. The license may be revoked at the pleasure of the board of aldermen.

Revocation of license.

MOVING BUILDINGS IN PUBLIC STREETS.¹

SECTION 1. All applications for moving buildings through the streets of this city shall be made to the board of aldermen, and referred to a committee for consideration and report.

How applications shall be made.
Feb. 1, 1875.

¹ Rules to regulate the moving of buildings through the streets of the city of Boston. Adopted by the board of aldermen, Feb. 1, 1875.

What facts applications shall state.
Feb. 1, 1875.

SECT. 2. All applications shall state the location of the building proposed to be moved, its length, width, height, and the principal material of its exterior sides and roof; and shall definitely describe the route over which it is to be moved, and the length of time required to move the same.

Consent of certain parties to be filed.
Ibid.

SECT. 3. All applications shall be accompanied by the written consent of the inspector of buildings, to place the building on the lot proposed; also by the written consent of all railroad corporations whose tracks are to be crossed or encumbered by the moving of the building.

To whom permits shall be given.
Ibid.

SECT. 4. Permits shall be granted only to practical building movers, who are known to be engaged in such business.

Bond to pay damages to be filed.
Ibid.

SECT. 5. Before a permit is issued, the building mover shall file with the city clerk a bond in the sum of not less than one thousand dollars, with two or more sureties (one of whom shall be the owner of the building), to save harmless and indemnify the city from all damages which may be caused to persons or property by reason of the moving of the building.

Trees not to be cut, except, etc.
Ibid.

SECT. 6. The consent of the board of aldermen shall be obtained before any shade trees are removed or the branches thereof cut or trimmed.

Fire alarm wires not to be cut.
Ibid.

SECT. 7. The written consent of the board of fire commissioners shall be obtained before any fire-alarm telegraph wires are cut or removed.

SECT. 8. The written consent of the superintendent of lamps must be obtained before any lamps or lamp-posts are removed.

Lamp-posts not to be removed.
Feb. 1, 1875.

SURVEYORS.

STATUTES.

TRUE MERIDIAN LINES.

1. It shall be the duty of the county commissioners of each county of this commonwealth, within one year from and after the passage of this act, to erect on land situated in the county, at such place or places in the several counties as the public convenience may require, and under the direction of a commissioner to be appointed by the governor and council, a true meridian line or lines, to be perpetuated by substantial stone posts or pillars, upon whose summits shall be firmly and immovably fixed brass or copper points to indicate the true range of such meridian; the said posts or pillars to be and to remain the property of the county wherein the same shall be located, under the custody and care of the county commissioners of said county, to be free to the access of any surveyor or civil engineer residing in said county, or engaged in surveying therein, for the purpose of testing the variation of the compass for the time being; and the expense attending the same shall be paid from the treasury of the several counties. The county commissioners in any county may purchase, on behalf of their county, the right to erect and maintain the posts or pillars, provided for by this act, with rights of way thereto, and may take grants to their county, of such rights.

True meridian lines to be erected at convenient places in every county for use of surveyors, etc.
1870, c. 286, § 1.

2. Said pillars or posts shall be constructed and erected in the following manner: Each post shall be of granite, or other equally durable stone, shall be at least eight feet in length, eighteen inches square at the base, and one foot square at the top; three posts of this description shall be erected in an exact line north and south, and distant from each other not less than two hundred feet; these

Pillars and posts, how to be erected.
Ibid. § 2.

1870, c. 286, § 2, stone pillars shall be set firmly in the ground, and protected from upheaval by the frost. The top of each post shall be tapered to a square or circle of eight inches diameter, on which shall be placed a brass or copper cap of circular form, on which shall be plainly engraved a cross indicating the four cardinal points, and marked by the letters N. S. E. W., or the words North, South, East, West, each letter or word on its relative arm or point; the said brass or copper cap to be firmly fastened to the pillar either by brass or copper bolts.

Land surveyors
to adjust com-
pass annually.
Ibid. § 3.

3. It shall be the duty of every land surveyor in the state, at least once in every year, to adjust and verify his compass by the meridian line so established in the county wherein his surveys are to be made, and to insert in his field notes, the true as well as the magnetic bearings of the lines of his surveys, and the day on which the lines were run.

Record to be
kept of the va-
riation of com-
pass of each
surveyor.
Ibid. § 4.

4. It shall be the duty of the commissioners of the several counties aforesaid to procure a book of records to be kept by the clerk of the courts, or any person appointed by the county commissioners to keep said book of records, which shall be accessible to all persons wishing to refer thereto, and every surveyor, on having adjusted his compass as aforesaid, shall enter therein the variation of his compass from the true meridian, whether east or west, and shall subscribe his name and affidavit thereto.

Penalty on sur-
veyor for neg-
lect, etc.
Ibid. § 5.
1875, c. 13.

5. Any surveyor who shall neglect or refuse to comply with the provisions of this act shall for every such neglect or refusal be subject to a fine of ten dollars, to be recovered on complaint made before any court of competent jurisdiction, one-half to be paid to the person making the complaint, and the other half to the county within which such complaint shall be made. But said penalty shall not be imposed, unless the land surveyor, of whom complaint is made, has used his compass to measure an angle or angles in surveying within the year preceding the date of the complaint.

Governor to ap-
point commis-
sioner to super-
intend erection
of posts, verify
meridian lines,
etc.
Commissioner
to report to

6. It shall be the duty of the governor and council to appoint some competent person as commissioner to superintend the erection of said posts or pillars, and to inspect and verify, by astronomical observations, the meridian lines so established, who shall make a report of his doings thereon, with a full and accurate description of the monuments, the latitude and longitude of the same; also

the declination of the needle for the time being, upon each of the said meridian lines, and deposit a record thereof with the clerk of the courts in each of the counties aforesaid; and the said commissioner shall be paid for his services, from the treasury of the commonwealth, such compensation as by the governor and council may be deemed equitable and just.¹

governor and council.
1870, c. 286, § 6.

7. Any person or persons who shall wilfully displace, alter, deface, destroy, or otherwise injure any of the posts or fixtures thereof, shall be punished upon complaint and conviction, before any court of competent jurisdiction, by fine not exceeding two hundred dollars, one-half to be paid to the complainant, and the other half to the county wherein such offence may have been committed.

Penalty for injuring posts or fixtures.
Ibid. § 7.

8. All apparatus for linear measurements used by any land surveyor shall be tested and proved, once in each year, by the sealer of weights and measures, in the town or city where such surveyor resides, or where he has his business-office, and all chains, tapes or other implements used for linear measurements that cannot be made to conform to the standard, shall be marked condemned, or CD., by the sealer of weights and measures, and no surveyor shall thereafter use the same for measuring land, under the penalty of twenty dollars for each offence.

Apparatus used by land surveyors for linear measurements, to be annually tested by sealer of weights and measures, and condemned, if, etc.
1871, c. 330, § 1.
Penalty.

9. The mayor and aldermen of any city, or selectmen of any town, may, if in their judgment they shall deem it expedient so to do, appoint any suitable and competent person other than the sealer of weights and measures, to test and prove such measuring implements used by land surveyors.

Other competent persons may be appointed to test implements.
Ibid. § 2.

10. In all cases the standards used for such tests shall be based upon, and shall correspond to the standards furnished by the state to sealers of weights and measures.

Tests to be based upon standards furnished by the state.
Ibid. § 3.

11. The fees for such testing and proof of each article of apparatus shall be twenty-five cents, to be paid by the person presenting the apparatus for test.

Fees.
Ibid. § 4.

¹ On the petition of the state commissioner, that proper points or meridian lines be indicated in Suffolk county, an order was passed by the board of aldermen, Nov. 22, 1870, directing the city surveyor to erect suitable monuments for that purpose; and by an order, passed Oct. 31, 1871, the city surveyor was authorized to keep the record required by the fourth section of the above act.

CITY SURVEYOR.

ORDINANCE.¹

Committee on
city surveyor's
dept.
Oct. 12, 1868.

SECTION 1. In the month of January, in each year, there shall be appointed a joint committee of the city council, called the committee on the city surveyor's department, consisting of two members of the board of aldermen, and three members of the common council. The said committee shall have the care and supervision of the city surveyor's office; and shall approve the appointment and discharge of all persons employed therein; and they shall fix the amount of compensation to be paid to said employes respectively: *provided*, that the same shall not, in the aggregate, exceed the sum appropriated therefor by the city council.

Choice of city
surveyor.
Ibid.

SECT. 2. There shall be chosen, annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a city surveyor, who shall be a citizen of Boston. He shall hold his office for one year from the first Monday in April in the year in which he may be elected, unless sooner removed; and he may be removed at the pleasure of the city council; and vacancies may be filled at any time for an unexpired term. He shall receive such compensation as the city council may from time to time determine.

To make official
surveys and
plans.

SECT. 3. Said surveyor shall, by himself or his assistants, make such surveys, plans, estimates, and

¹ An ordinance relating to the city surveyor's department, passed October 12, 1868.

descriptions, and take such levels, as may be re- Oct. 12, 1868.
 quired of him by the mayor, the board of aldermen,
 the common council, or any committee of the city
 council, or of either branch thereof, or any board
 established by the city council; and he may, with the
 approval of the committee on the city surveyor's
 department, as provided in the first section, employ
 such assistants as may be necessary to perform the
 services required of him.

SECT. 4. Said surveyor shall furnish the commit- To furnish
plans, etc. to
committee and
commissioners.
Ibid.
 tee of the board of aldermen, on laying out and
 widening streets, and the board of street commis-
 sioners, with such plans and information in relation
 to any projects under consideration by them as they
 may require. He shall have charge of all surveys
 and plans relating to the laying out, widening, ex-
 tending, and grading of streets.

SECT. 5. Said surveyor shall prepare all such To prepare
statements and
estimates.
Ibid.
 statements and estimates relating to street widen-
 ings, extensions, and alterations which said commit-
 tee or commissioners may require; and shall, when-
 ever required, furnish the city solicitor with all
 necessary descriptions of lands.

SECT. 6. If, in the opinion of the said committee Clerical
assistance.
Ibid.
 on laying out and widening streets, the said surveyor
 needs any special clerical assistance to perform the
 duties required of him by said committee or said
 commissioners, he may, with the consent and approval

Oct. 12, 1868.

of said committee, employ a suitable clerk, whose compensation shall be fixed by said committee, and paid from the appropriation for laying out and widening streets.

Annual report.
Ibid.

SECT. 7. Said surveyor shall, annually, in the month of January, submit to the city council a report in relation to his department, showing the number of persons employed, the detailed expenses of the department, the general nature of the work, and such other general information in relation to the same as he may deem expedient.

ASSESSMENT OF TAXES.

STATUTES.

PERSONS AND PROPERTY SUBJECT TO TAXATION.

Poll tax.

G. S. c. 11, § 1.

7 Mass. 523.

4 Met. 181.

5 Met. 594.

1. A poll tax shall be assessed, in the manner hereinafter provided, on every male inhabitant of the commonwealth, above the age of twenty years, whether a citizen of the United States or an alien.

Property tax.

G. S. c. 11, § 2.

4 Met. 564.

4 Cush. 12.

8 Cush. 237.

4 Gray, 500.

16 Gray, 293.

101 Mass. 317,

329.

106 Mass. 540.

2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation as hereinafter provided.¹

¹ The United States Statute of 1864, c. 106, § 41, makes unlawful the imposing by, or by the authority of, a state, of a tax on shares owned by an inhabitant thereof in the capital stock of a national banking association, organized under that statute and located in another state. 99 Mass. 141

3. Real estate, for the purposes of taxation, shall include all lands within this state, and all buildings and other things erected on or affixed to the same.

Real estate.
G. S. c. 11, § 3.
10 Cush. 514.
22 Pick. 22.
101 Mass. 328.
102 Mass. 79.

4. Personal estate shall, for the purposes of taxation, include goods, chattels, money, and effects, wherever they are; ships and vessels at home or abroad; money at interest, and other debts due the persons to be taxed more than they are indebted or pay interest for; public stocks and securities; stocks in turnpikes, bridges, and moneyed corporations, within or without the state; the income from an annuity, and so much of the income from a profession, trade, or employment, as exceeds the sum of two thousand dollars, and which has accrued to any person during the year ending on the first day of May of the year in which the tax is assessed; but no income shall be taxed which is derived from property subject to taxation.¹

Personal estate.
G. S. c. 11, § 4.
1873, c. 354.
16 Pet. 435.
6 Pick. 98.
16 Pick. 572.
9 Met. 73, 199.
7 Cush. 600.
10 Cush. 128.
10 Allen, 100.
12 Allen, 309, 508.
14 Allen, 359, 366.
101 Mass. 533.
103 Mass. 544.
105 Mass. 519.
106 Mass. 540.
11 Wall. 113.
15 Wall. 360.

PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

5. The following property and polls shall be exempted from taxation:—

Property exempted.
G. S. c. 11, § 5.

First. The property of the United States.

Second. The property of the commonwealth, except real estate, of which the commonwealth is in possession under a mortgage for condition broken.

Property of the United States.
Of the state.
G. S. c. 11, § 5.
4 Met. 564.
8 Cush. 237.
4 Gray. 510.
12 Allen, 75.

Third. The personal property of literary, benevolent, charitable, and scientific institutions, incorporated within this commonwealth, and the real estate belonging to such institutions, occupied by them or their officers for the purposes for which they were incorporated.²

Of certain institutions.
G. S. c. 11, § 5.
2 Cush. 611.
12. Cush. 559.
11 Allen, 470.
99 Mass. 599.
101 Mass. 319.
114 Mass. 337.

¹ Income derived from dealings in merchandise is not "derived from property subject to taxation" within the meaning of Gen. Sts. c. 11, § 4. 103 Mass. 544.

A merchant's income from his business is taxable under the Gen. Sts. c. 11, § 4, though he is taxed also on his stock in trade. *Id.*

² But this does not apply to unincorporated charitable associations. City solicitor's opinion, City Doc. No. 24, 1862. Land purchased by a charitable institution, where measures have been taken preliminary to commencing the erection of a hospital thereon, is occupied by the society for the purposes for which it was incorporated, and so is exempt from taxation under the clause which exempts such property when so occupied. 113 Mass. 58.

Of school districts.

Fourth. All property belonging to common school districts, the income of which is appropriated to the purposes of education.

Fifth. The Bunker Hill monument.

Bunker Hill monument.
Household furniture, etc.
G. S. c. 11, § 5.
1865, c. 206, § 1.
10 Gray, 243,
and cases cited.

Sixth. The household furniture of every person, not exceeding one thousand dollars in value, his wearing apparel, farming utensils, and mechanic's tools necessary for carrying on his business to an amount not exceeding three hundred dollars in value.

Churches.

G. S. c. 11, § 5.
1865, c. 206, § 1.
1 Met. 538.
99 Mass. 599.
118 Mass. 164.

Seventh. Such houses of religious worship as are owned by a religious society, or held in trust for the use of religious organizations, and the pews and furniture (except for parochial purposes); but portions of such houses appropriated for purposes other than religious worship shall be taxed at the value thereof to the owners of the houses.¹

Cemeteries, etc.

G. S. c. 11, § 5.
118 Mass. 354.

Agricultural societies.

Ibid.

Property of certain females to amount of five

Eighth. Cemeteries, tombs, and rights of burial, so long as the same shall be dedicated for the burial of the dead.

Ninth. The estate, both real and personal, of incorporated agricultural societies.

Tenth. The property, to the amount of five hundred dollars, of a widow or unmarried female, and of any female minor, whose

The charter of Harvard College exempts from all civil impositions, taxes and rates, the lands of the college, not exceeding a certain annual value. In *Harvard College vs. Boston*, 104 Mass. 622, it was held, that if, at the time when the land was acquired by the college, before the adoption of the constitution of the commonwealth, it was within the limit of the exemption, and continued within it until and at the time when the constitution was adopted, the college is entitled to continue to hold it exempted, notwithstanding that its annual value now greatly exceeds the limit, and that the college holds other lands, also exceeding the limit in value, aside from lands exempted under the general tax acts.

¹ The amount of real and personal estate, in addition to the meeting-house which may be held by a religious society, has been limited to so much as is necessary for its objects, and no more. St. 1870, c. 67, amending General Statutes, c. 30, § 28.

Real estate held by a religious society, not more than sufficient in extent to meet its reasonable requirements in this respect, and devoted by such society in good faith to the erection of a church edifice, upon which the work of erection already commenced is prosecuted without unreasonable delay, and being all the real estate which is so held, is entitled to the exemption given by the statute. 118 Mass. 164.

As to the rule of division where an estate is partly taxable and partly exempt, see *Cambridge vs. Co. Commissioners of Middlesex*, 114 Mass. 337.

father is deceased, if her whole estate, real and personal, not otherwise exempted from taxation, does not exceed in value the sum of one thousand dollars. hundred dollars.
G. S. c. 11, § 5.

Eleventh. Mules, horses, and neat cattle, less than one year old ; Cattle, etc.
Ibid.
and swine and sheep less than six months old.

Twelfth. [Repealed.]

See 1869, c. 463.

Thirteenth. The polls and any portion of the estates of persons who, by reason of age, infirmity and poverty, are, in the judgment of the assessors, unable to contribute fully towards the public charges. Polls and
estates of per-
sons unable to
pay.
G. S. c. 11, § 5.

6. The location of a railroad not more than five rods wide is exempt from taxation. But land without the limits of the route fixed for railroad corporations, taken or purchased for depot or station purposes, shall not be exempt from taxation. Location of rail-
roads.
G. S. c. 63,
§§ 19, 20.
1874, c. 372, § 62.
4 Met. 564.
8 Cush. 237.
1 Allen, 199.

7. All United States bonds and legal tender treasury notes are exempt under statutes of the United States. U. S. bonds.
U. S. St. 1862,
c. 33, § 2.
Ibid. 1863, c. 73.
7 Wall. 16, 26.

8. Land taken for public uses (e. g., land purchased or taken by a city by authority of the legislature, for the purpose of supplying the city with pure water) is exempt. Lands for
public use.
4 Gray, 500.

9. In all cases where lands belonging to the commonwealth are or have been sold by the commissioners of public lands, and agreements for deeds are or have been given by said commissioners, the land shall be free from taxation for the space of three years, unless previously built upon or otherwise improved by the purchasers or their assigns ; and upon the expiration of three years from the date of such sale, such lands shall be taxable to the purchasers thereof, or their assigns, in the same manner and to the same extent as if deeds of the same had been executed and delivered. Lands sold by
state to be taxed
to owner after
three years.
1867, c. 101, § 1.

10. Any city or town, for the term of ten years next after the passage of this act, may exempt from taxation for any purpose whatsoever, all the machinery, buildings, real estate and all other property owned by any individual or individuals, corporation or corporations, organized under any law of this state, and used exclusively in the business of manufacturing beet sugar : *provided*, that this exemption from taxation shall not apply to lands upon which beets are raised for the purpose of manufacture. Machinery, etc.,
used in manu-
facture of beet
sugar, may be
exempted from
taxation.
1872, c. 327.

WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

Poll tax, where assessed.

G. S. c. 11, § 6.

5 Pick. 369.

1 Met. 242, 250.

3 Met. 199.

4 Met. 181.

9 Cush. 525.

10 Cush. 362.

12 Cush. 44, 52,

54.

2 Gray, 484.

3 Gray, 493.

7 Gray, 299.

9 Gray, 357.

12 Gray, 21.

4 Allen, 177.

12 Allen, 111.

112 Mass. 384.

In cities, each inhabitant liable to tax, to be assessed in the ward where he dwells.

1876, c. 225, § 1.

Tax not invalid by mistake of assessors in ascertaining ward where person should be assessed.

Ibid. § 7.

Person to be taxed where he designates his place of residence to be.

G. S. c. 11, § 7.

11. The poll tax shall be assessed upon each taxable person, in the place where he is an inhabitant, on the first day of May, in each year, except in cases otherwise provided for by law.¹ The poll tax of minors liable to taxation shall be assessed to, and in the places of the residence of, the parents, masters, or guardians having control of the persons of such minors; but if a minor has no parent, master, or guardian within this state, he shall be personally taxed for his poll, as if he were of full age. The poll tax of every other person under guardianship shall be assessed to his guardian in the place where the guardian is taxed for his own poll.

12. In the several cities of this commonwealth it shall be the duty of the assessors to assess each inhabitant thereof who is liable to assessment for the payment of taxes, as of the first day of May in each year, in the ward of such city in which such inhabitant dwells or has his home.

13. No tax, the payment of which is otherwise due to any city, shall be made invalid by reason of any mistake of the assessors in ascertaining the ward in which the person from whom it is due should be assessed, or by reason of anything contained in this act [1876, c. 225], or the proceedings which may be had under its provisions.

14. A taxable person in a city or town on the first day of May, who, when inquired of by the assessors thereof, refuses to state where he considers his legal residence to be, shall, for the purpose of taxation, be deemed an inhabitant of such place. If, when so inquired of, he designates another place as his legal residence, said assessors shall notify the assessors of such place, who, upon receiving the notice, shall tax such person as an inhabitant of their city or town. But such person shall not be exempt from the payment of a tax legally assessed upon him in the city or town of his legal domicile.

¹ One actually residing in a town, May 1, is taxable there if he has no domicile for taxation elsewhere, although he then intended to remove to another state, and had taken some steps in that direction. 9 Gray, 357.

15. When any person, on or before the fifteenth day of September in any year, gives notice in writing, accompanied by satisfactory evidence, to the assessors of a city or town, that he was, on the first day of May of that year, an inhabitant thereof, and liable to pay a poll tax, and furnishes, under oath, a true list of his polls and estate, both real and personal, not exempt from taxation, the assessors shall assess him for his polls and estate; but such assessment shall be subject to the provisions of chapter one hundred and twenty-one of the acts of the year one thousand eight hundred and sixty-five [p. 823, § 74, *post*], and the assessors shall, on or before the first day of October, deposit with the clerk of the city or town a list of the persons so assessed. The taxes so assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant.

Supplementary
taxation of polls.
1863, c. 211, § 2.
1860, c. 443.
102 Mass. 75.

16. Whenever any person shall make application to the assessors of any city or town of this commonwealth, to be assessed a poll tax for the then current year, and it shall appear that such applicant was, on the first day of May preceding, a resident of said city or town and liable to pay a poll tax therein, but was not assessed therefor, and that such applicant is or has been, during any portion of the two years preceding such application, engaged in the military or naval service of the United States, it shall be the duty of such assessors forthwith to assess such tax, and notify the treasurer of such city or town of the same, and the person so assessed shall, upon payment of said tax, be entitled to the right to vote in said city or town to the same extent as if his taxes had been assessed and paid in the manner heretofore provided by law.

Soldiers and
sailors may be
assessed and
vote on pay-
ment of tax.
1865, c. 63, § 1.

17. When any person liable to be taxed for personal property shall have changed his domicile, it shall be the duty of the assessors of the city or town where he resides to require forthwith of the assessors of the city or town where such person was last taxed as an inhabitant, such written statement of any facts within their knowledge as will assist in determining the value of the personal estate of such person, and also the amount he was last assessed in such city or town; and such information shall be furnished by the assessors of the city or town where he was last taxed or assessed.

Assessors to no-
tify other towns
where parties
change domicil.
1866, c. 170, § 1.

Duties after re-
ception of no-
tice.

1866, c. 170, § 2.

18. When the assessors of any city or town shall have received notice from the assessors of any other city or town within the commonwealth of the amount at which a person, having been an inhabitant thereof, was last taxed on personal property, such notice shall be filed in their office, subject to public inspection; and they shall not assess such person upon any less amount of personal estate than he was last assessed, until he shall have brought in to such assessors a list of his personal estate, in accordance with the provisions of the twenty-second and twenty-third sections of the eleventh chapter of the General Statutes.

Penalty for con-
cealment of resi-
dence.

1864, c. 172, § 1.

19. Any inhabitant of this commonwealth who shall escape taxation by wilfully and designedly changing or concealing his residence, or by any other act, with the intent so to escape, shall be liable, upon conviction therefor, to pay a fine of twice the amount of the last tax paid by such person; or if he shall have paid no tax in this commonwealth, a fine of not less than one hundred nor more than five thousand dollars.

Jurisdiction of
offence.

Ibid. § 2.

20. Any person offending against the provisions of this act [1864, c. 172] may be indicted and tried in any county where any of the acts or things made criminal by this act are done, or in the county where such person is liable to taxation.

Real estate,
where and to
whom taxed.
G. S. c. 11, § 8.
1 Cush. 142.
4 Cush. 260.
2 Gray, 185.
7 Gray, 127, 277.
16 Gray, 583.
4 Allen, 57.
110 Mass. 47.

21. Taxes on real estate shall be assessed in the city or town where the estate lies, to the person who is either the owner or in possession thereof on the first day of May.¹ Mortgagors of real estate shall, for the purposes of taxation, be deemed owners until the mortgagee takes possession, after which the mortgagee shall be deemed the owner.

Tenant may
recover of land.

22. When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent the taxes paid by him, or may recover

¹ Taxes on land are an encumbrance thereon from the date of their assessment. 106 Mass. 29.

Assessors knowing who is in possession of real estate cannot legally assess its tax "on owners unknown;" neither can they make such an assessment knowing or having the means of knowing in whom the record title is. 112 Mass. 535. On the question as to who is liable to pay the tax on land sold and conveyed on the first day of May or immediately thereafter, see 106 Mass. 30, and 110 Mass. 387.

the same in an action against his landlord, unless there is an agreement to the contrary.

23. The undivided real estate of a deceased person may be assessed to his heirs or devisees, without designating any of them by name, until they have given notice to the assessors of the division of the estate, and the names of the several heirs or devisees; and such heir or devisee shall be liable for the whole of such tax, and when paid by him he may recover of the other heirs or devisees their respective portions thereof.¹

24. The real estate of a person deceased, the right or title to which is doubtful or unascertained, by reason of litigation concerning the will of the deceased, or the validity thereof, may be assessed in general terms to the estate of the deceased; and said tax shall constitute a lien upon the land so assessed, and may be enforced by the sale of the same, or a part thereof, as provided for enforcing other liens for taxes on real estate.

25. All personal estate, within or without this state, shall be assessed to the owner in the city or town where he is an inhabitant, on the first day of May, except as follows:—

First. All goods, wares, merchandise, and other stock in trade (except ships or vessels owned by a copartnership), including stock employed in the business of manufacturing, or of the mechanic arts, in cities or towns within the state, other than where the owners reside, whether such owners reside within or without this state, shall be taxed in those places where the owners hire or occupy manufactories, stores, shops, or wharves, whether such property is within said places, or elsewhere, on the first day of May of the year when the tax is made.²

lord, taxes paid, unless, etc.
G. S. c. 11, § 9.

Real estate of person deceased may be assessed to heirs, etc.

One liable for whole, with right to contribution.
Ibid. § 10.

Real estate of deceased where title is in dispute.
Ibid. § 11.
9 Gray, 433.
16 Gray, 292, 337.
97 Mass. 321.

Personal estate taxed where owner resides.
Ibid. § 12.
6 Pick. 98.
1 Met. 232, 250.
4 Cush. 546.
10 Cush. 65.
11 Cush. 362.
3 Gray, 494.
7 Gray, 277.
6 Gray, 519.
12 Gray, 21.
16 Gray, 337.
9 Allen, 246.
14 Allen, 366.
103 Mass. 273.
104 Mass. 587.
Stock in trade, etc., employed in other towns.
G. S. c. 11, § 12.
4 Met. 146.
4 Cush. 543.
10 Cush. 65.
6 Gray, 579.
13 Gray, 438.

¹ The life interest terminating after the first of May, the life tenant or his representatives must pay the whole tax for the year. 9 Allen, 246.

² United States internal revenue stamps are not subject to state or local taxation as property, nor, under the General Statutes, c. 11, § 12, as "stock in trade." 101 Mass. 329, 246.

Goods imported from a foreign country, upon which the duties and charges at the custom-house have been paid, are not subject to state taxation whilst remaining in the original cases, unbroken and unsold, in the hands of the importer, whether the tax be imposed upon the goods as imports, or upon the

Machinery,
where taxed,
etc.

G. S. c. 11, § 12.
See 1862, c. 174.

4 Met. 181.

12 Allen 75, 316.

100 Mass. 183.

Second. All the machinery employed in any branch of manufactures, and belonging to a person or corporation, shall be assessed where such machinery is situated or employed; and, in assessing the stockholders for their shares in any manufacturing corporation, there shall first be deducted from the value thereof the value of the machinery and real estate belonging to such corporation.¹

Horses, etc.

G. S. c. 11, § 12.

8 Allen, 330.

Third. Horses, mules, neat cattle, sheep, and swine, kept throughout the year in places other than those where the owners reside, whether such owners reside within or without this state, and horses employed in stages or other vehicles, for the transportation of passengers for hire, shall be assessed to the owners in the places where they are kept.

Property of persons under
guardianship.

G. S. c. 11, § 12.

Fourth. Personal property belonging to persons under guardianship shall be assessed to the guardian in the place where the ward is an inhabitant, unless the ward resides and has his home without

goods as part of the general property of the citizens of the state which is subjected to an *ad valorem* tax. Goods imported do not lose their character as imports, and become incorporated into the mass of property of the state, until they have passed from the control of the importer, or been broken up by him from their original cases. *Low et al. vs. Austin*, 13 Wallace, 29.

Persons not residing in a town, and having therein no store, shop or wharf, are not subject to taxation there by reason of their hiring a yard in which they keep and sometimes sell lumber, and have put up a small building for the convenience of men employed by them. 103 Mass. 278.

A citizen of one town owning hotel furniture in a hotel in another town is taxable therefor in the place of his residence, and not in the place where the hotel is situated. 109 Mass. 270. See also 7 Gray, 277; 4 Cush. 543; 3 Allen, 546; 15 Allen, 13; 103 Mass. 278.

Manufacturing corporations are not taxable for their personal property in the town where their manufactory is established. 10 Mass. 514; 17 Mass. 461. Otherwise as to their real estate. 11 Pick. 514. And their fixed machinery. 4 Met. 181; 7 Gray, 277.

Mutual life insurance companies are not taxable for their investments in national bank stock. 104 Mass. 586.

¹ An incorporated street railroad company is not taxable for horses or other personal property used in and necessary to the prosecution of its business. 8 Allen, 330.

An aqueduct company is not taxable for its pipes, as being machinery, under 1865, c. 283; 100 Mass. 183. Otherwise as to a gas-light company. 12 Allen, 75.

the state, in which case it will be taxed to the guardian in the place where he is an inhabitant.

Fifth. Personal property held in trust by an executor, administrator, or trustee, the income of which is payable to another person, shall be assessed to the executor, administrator, or trustee, in the place where such other person resides, if within the state; and if he resides out of the state, it shall be assessed in the place where the executor, administrator, or trustee resides, and if there are two or more executors, administrators, or trustees, residing in different places, the property shall be assessed to them in equal portions in such places, and the tax thereon shall be paid out of said income. If the executor, administrator, or trustee, is not an inhabitant of this state, it shall be assessed to the person to whom the income is payable, in the place where he resides.

Sixth. Personal property placed in the hands of a corporation or individual, as an accumulating fund for the future benefit of heirs or other persons, shall be assessed to such heirs or persons, if within the state; otherwise to the person so placing it, or his executors or administrators, until a trustee is appointed to take charge of such property, or the income thereof.

Seventh. The personal estate of deceased persons shall be assessed in the place where the deceased last dwelt.¹ After the appointment of an executor or administrator, it shall be assessed to such executor or administrator until he gives notice to the assessors that the estate has been distributed and paid over to the parties interested therein. Before such appointment it shall be assessed in general terms to the estate of the deceased, and the executor or administrator subsequently appointed shall be liable for the tax so assessed in like manner as though assessed to him.

26. Property held by a religious society, as a ministerial fund, shall be assessed to the treasurer of the society. If such property

See 1865, c. 233,
§§ 2-15.
2 Gray, 294.
4 Allen, 462.
105 Mass. 528.

Trust property,
etc.

Ibid. § 12.
15 Pick. 376.
18 Pick. 123.
5 Cush. 93.
6 Gray, 132.
6 Allen, 277.
13 Allen, 267.
105 Mass. 528.

Property deposited to accumulate.
G. S. c. 11, § 12.
13 Allen, 267.

Property of deceased persons.
Ibid.
5 Pick. 236.
4 Cush. 1.
6 Allen, 277.
97 Mass. 321.
102 Mass. 348.

Property held as a ministerial fund.

¹The personal estate of a deceased person, which is taxable in the town where he last dwelt, is not taxable in any other town. 6 Allen, 277; 102 Mass. 348.

A town collector cannot maintain an action against the administrator of the estate of one deceased for the amount of a tax upon personal property assessed to the "estate of" the deceased after the date of the administrator's appointment. 97 Mass. 321.

G. S. c. 11, § 13. consists of real estate, it shall be taxed in the town where it lies;
 19 Pick. 542. if it consists of personal property, it shall be taxed in the town
 12 Cush. 54. where such society usually hold their meetings.
 14 Allen, 366.

Personal prop- 27. Personal property mortgaged or pledged shall, for the pur-
 erty mortgaged, poses of taxation, be deemed the property of the party who has
 etc. the possession.
 Ibid. § 14.
 70 Met. 334.
 10 Allen, 100.

Partners may 28. Partners in mercantile or other business, whether residing
 be jointly taxed in the same or different places, may be jointly taxed under their
 for stock in partnership name in the place where their business is carried on,
 trade. for all the personal property employed in such business, except
 Ibid. § 15. ships or vessels. If they have places of business in two or more
 9 Cush. 298. towns, they shall be taxed in each of such places for the propor-
 7 Gray, 132. tion of property employed therein. When so jointly taxed each
 105 Mass. 526. partner shall be liable for the whole tax.¹

Ships of copart- 29. Ships or vessels owned by a copartnership shall be assessed
 ners, where to the several partners in their places of residence, proportionally
 assessed. to their interests therein, if they reside within the commonwealth;
 1870, c. 328. but the interests of the several partners who reside without the
 10 Gray, 97. commonwealth shall be assessed to the copartnership in the place
 14 Allen, 366. where their business is carried on.

Reservoirs 30. All reservoirs of water, with the dams connected therewith
 where assessed. and the lands under the same, used to maintain a uniform supply
 1872, c. 306. of water for mill power, shall be assessed for the purposes of tax-
 6 Allen, 131. ation in the town or towns where located, at a valuation not
 102 Mass. 76. exceeding a fair valuation of land of like quality in the immediate
 118 Mass. 386. vicinity.²

MANNER OF ASSESSING TAXES.

Warrants for 31. When a state tax is to be assessed, the treasurer shall send
 state tax to be his warrants for the assessing thereof by mail to the assessors of
 sent to assessors the several cities and towns in the commonwealth.³
 by mail.
 1867, c. 166, § 1.

By what rules 32. The assessors shall assess state taxes for which they
 all taxes to be receive warrants from the treasurer, according to the rules pre-
 assessed.

¹ The interest of an inhabitant of this commonwealth as a partner in the property of a firm established and carrying on business in another state is taxable here. 14 Allen, 366.

² This act [§ 30] has been declared unconstitutional by S. J. C. in 118 Mass. 386.

³ Section 17, c. 11, G. S., repealed by St. 1867, c. 166.

scribed in this chapter. They shall, in like manner, assess all county taxes which are duly certified to them, all city or town taxes voted by their places, and all taxes duly voted and certified by school districts therein.¹

33. If the assessors of a city or town neglect to obey a warrant so received from the treasurer, or to assess such a county, town or district tax, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars; and the commissioners in the respective counties shall forthwith appoint other suitable persons to assess such tax, according to the warrant of the treasurer. The persons so appointed shall take the same oath, perform the same duties, and be liable to the same penalties, as are provided in the case of assessors of towns.

34. If within five months after the receipt of a warrant from the state treasurer, or a certificate from the county commissioners, requiring the assessment of a tax, the same is not assessed and certified as the law requires, the amount of the tax may be recovered of the city or town where the neglect occurs, in an action of contract by the treasurer of the state or county respectively.

35. Keepers of taverns and boarding-houses, and masters and mistresses of dwelling-houses, shall, upon application of an assessor in the place where their house is situated, give information of the names of all persons residing therein, and liable to be assessed for taxes. Every such keeper, master, or mistress, refusing to give such information, or knowingly giving false information, shall forfeit twenty dollars for each offence.

LISTS OF POLLS AND ESTATES.

36. Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, at any of their meetings, or by posting up, in their city or town, one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and estates, both real and personal, not exempted from taxation.¹

G. S. c. 11, § 18.
12 Met. 178.

Penalty if assessors refuse to obey warrant. In such case commissioners to appoint. Ibid. § 19.

Town, etc., liable for state or county tax not assessed. Ibid. § 20.

Keepers of taverns, etc., to give names of persons taxable. Penalty. Ibid. § 21.

Assessors to give notice to bring in lists of polls and property. Ibid. § 22.
12 Met. 211.
5 Cush. 97.
8 Cush. 55.
8 Gray, 500.
1 Allen, 199.
101 Mass. 89.

¹ See § 74, p. 826.

May verify lists
by oath of the
party.

G. S. c. 11, § 23.
1 Allen, 199.

To make cash
valuation.
Ibid. § 24.
4 Gray, 254.

To receive lists
as true, unless,
etc.
Ibid. § 25.
12 Met. 211.
8 Cush. 64.
10 Allen, 100.
112 Mass. 218.

37. The assessors shall, in all cases, require a person bringing in such a list, to make oath that the same is true; which oath may be administered by either of the assessors.

38. The assessors of each place shall, at the time appointed, make a fair cash valuation of all the estate, real and personal, subject to taxation therein.

39. They shall receive as true the list brought in by each individual, according to the provisions of this chapter, unless, on being thereto required by the assessors, he refuses to answer on oath all necessary inquiries as to the nature and amount of his property.¹

PENALTY FOR MAKING FALSE RETURNS.

Penalty for mak-
ing false return
to assessors of
taxes.

1869, c. 190.

40. Whoever shall deliver or disclose to any assessor or assisting assessor of taxes, elected or appointed in pursuance of the laws of this commonwealth, any false or fraudulent list, return or schedule of property, as and for a true list of his estates, real and personal, not exempted from taxation, with intent thereby to avoid the lawful assessment or payment of any tax, or with intent thereby to defeat or evade the provisions of law in relation to the assessment or payment of taxes, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in jail not exceeding one year.

Penalty on
stockholders for
fraudulent
transfers,
wrong informa-
tion, etc., to
avoid taxation.

1864, c. 201, § 4.
13 Gray, 539.

41. Any shareholder who, with intent to avoid taxation, fraudulently transfers a share of corporate stock, or fraudulently causes or procures a certificate of a share to be issued to any person other than himself, or in any name other than his own; or refuses to inform, or wilfully misinforms, the corporation respecting his name or residence; or, having changed his residence to another city or town in this commonwealth, wilfully omits to give notice thereof to any corporation in this commonwealth in which he is a shareholder, shall forfeit one half of the par value of the shares so transferred, issued, or owned by him in the stock of such corporation, to be recovered by an action of tort to the use of the city or town in which he resides.

¹ Assessors of taxes are not bound by a list of property brought in for assessment and sworn to, if it appears from an examination of the person who brings it in that it is not true. 10 Allen, 100. See also 112 Mass. 218.

42. Any person who in any way, directly or indirectly, proposes or agrees to an assessment on any specific or limited amount less than he is liable by law to be taxed for, with a view, or as an inducement, to make any particular place his residence for the purpose of taxation, shall be punished by fine of one thousand dollars; and any assessor guilty of making or assenting to any such proposal shall be subject to a like penalty.

Penalty for agreeing to assessment on limited amount, etc., with view to residence, etc.
G. S. c. 11, § 26.
12 Allen, 599.

ASSESSORS TO ESTIMATE VALUE OF PERSONAL ESTATES NOT RETURNED.

43. They [the assessors] shall ascertain as nearly as possible the particulars of the personal estate, and of the real estate in possession or occupation, as owner or otherwise, of any person who has not brought in such list, and make an estimate thereof at its just value, according to their best information and belief.

Assessors shall make an estimate when lists are not brought in.
Ibid. § 27.
8 Cush. 63.
2 Allen, 594.
To be conclusive, unless, etc.
Ibid. § 28.
5 Cush. 97.
8 Cush. 63.

44. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission.

VALUATIONS AND RETURNS OF ASSESSORS.

45. The secretary of the commonwealth shall furnish to each of the cities and towns in the state, on or before the first day of May in each year, suitable blank books for the use of the assessors of said cities and towns in the assessment of taxes, which books shall contain blank columns, numbered from one to twenty-seven inclusive, with uniform headings for a valuation list, and blank tables for aggregates.¹

Secretary of state to furnish books to assessors with uniform tables.
1861, c. 167, § 1.
See §§ 59, 60.

46. The assessors in each of the several cities and towns shall enter, in the books furnished in accordance with the provisions of the preceding section, the valuation and assessment of the polls and estate of the inhabitants assessed, in the following order:—

Assessors shall enter in books valuation and assessments.
Ibid. § 2.
102 Mass. 79.

In column number one. The names of the inhabitants or parties assessed for polls or estate.

In column number two. The number of polls for which any person named in the preceding column is taxable.

¹ For the "form" of the returns required, see the act as printed in the supplement to the General Statutes, vol. 1, p. 63.

1861, c. 167, § 2.
Assessors'
books, to con-
tain what.

In column number three. Total amount of cash tax on polls.

In column number four. The amount of each person's whole stock in trade, including all goods, wares, and merchandise, at home or abroad, of ratable estate, whether paid for or otherwise.

In column number five. A description of all ratable cash assets, viz.: Amount of money at interest more than the person assessed pays interest for, including public securities; the amount of money on hand, including deposits in any bank, or in any savings bank, which is not exempted by law from taxation; the number of shares of stock which are taxable, with the name of the corporation, in any bank, railroad, insurance, manufacturing, or other incorporated company.

In column number six. The true ratable value of the several items enumerated in the preceding column, placed opposite the description of said property or shares.

In column number seven. The true value of machinery used in all kinds of manufacturing establishments, including steam-engines, etc.; the value of such machinery to be entered opposite the description of the building in which it is used.

In columns number eight and nine. The whole number of taxable live stock, including horses, mules, asses, oxen, cows, steers, heifers, sheep, and swine; each kind to be stated separately, with the value affixed to each.

In columns number ten and eleven. Description of all other ratable personal estate not before enumerated, such as carriages, income, plate, furniture, tons of vessels, etc., with the true value of the same.

In column number twelve. The aggregate of each person's ratable personal estate.

In column number thirteen. The total tax on each person's personal estate.

In column number fourteen. Buildings of all kinds shall be described in the following order:—

Dwelling-houses; barns; shops of all kinds, naming their uses; stores; warehouses; distil-houses; breweries; tanneries, and other manufactories of leather; rope-walks; grist-mills; sawmills; steam and other mills not above enumerated; cotton factories, with the

number of spindles and looms used in the same ; woollen factories, 1861, c. 167, § 2.
 with the number of sets of cards used in the same ; linen factories, Assessors' books, to contain what.
 with the number of spindles and looms ; print works ; bleacheries ;
 gas works ; paper mills ; card factories ; boot and shoe factories ;
 India-rubber factories ; carriage and car factories ; piano-forte and
 musical instrument factories ; sewing-machine factories ; chair, pail,
 tub, and other wooden-ware factories ; oil factories ; glass factories ;
 all kinds of iron and brass works, and other buildings not above
 named.

In column number fifteen. True value of buildings enumerated in the preceding column placed opposite the description of the same, including water-wheels ; such value to be exclusive of land and water power, and of the machinery used in said buildings.

In columns number sixteen, seventeen, and eighteen. A description, by name or otherwise, of each and every lot of land assessed, the same placed opposite the name of the person or party to whom it is taxable, with the number of acres or feet in each lot, the number of quartz sand beds, of stone quarries and ore beds, and the true value thereof. 99 Mass. 29.

In columns number nineteen and twenty. The number of superficial feet of wharf, and the total value of the same.

In column number twenty-one. The aggregate value of each person's taxable real estate.

In column number twenty-two. The total tax on real estate.

In column number twenty-three. The aggregate cash tax assessed to each person on polls, personal and real estate.

In columns number twenty-four, twenty-five, twenty-six, and twenty-seven. The amount assessed for highway tax ; on polls ; on personal estate ; on real estate ; and the aggregate of the same. 1871, c. 298.

47. The assessors shall fill up the table of aggregates, by an enumeration of the necessary items included in the list of valuation and assessments required by the preceding section, and shall, on or before the first day of October, in each of the first four years of each decade, deposit in the office of the secretary of the commonwealth, an attested copy of the same, containing, — Assessors to fill up tables, etc., and send copy to the secretary of state. 1861, c. 167, § 3.

First. The total number of polls.

Second. The total tax on polls.

Third. The total value of, and tax on, personal estate. •

1861, c. 215, § 1.

1861, c. 167, § 3.
1861, c. 215.
See 1871, c. 293.

- Fourth.* The total value of, and tax on, real estate.
- Fifth.* The total tax for state, county, and town purposes, including highway tax.
- Sixth.* The rate per cent. of total tax.
- Seventh.* The total valuation of the city or town.
- Eighth.* Total number of dwelling-houses assessed.
- Ninth.* Total number of horses assessed.
- Tenth.* Total number of cows assessed.
- Eleventh.* Total number of sheep assessed.
- Twelfth.* The total number of acres of land assessed in the city or town.

Subsequent re-
turns to be
made by assess-
ors.

The assessors shall make similar returns in the first four years of the last half of each decade; and in every fifth and tenth year of each decade they shall deposit, in the office of the secretary of the commonwealth, on or before the first day of October, a certified copy, under oath, of the assessors' books of those years; and said books thus deposited, shall contain an aggregate sheet, properly filled in accordance with the provisions of this act, which shall be in like manner certified by the assessors; and in every fifth and tenth year of each decade the secretary shall furnish duplicate copies of blank books to the cities and towns for the foregoing purpose: *provided, however*, that in the case of the city of Boston, the returns required by this section to be deposited in the office of the secretary, may be thus deposited on or before the first day of November, in the several years respectively.¹

¹ For act establishing the polls and estates of the several cities and towns in the commonwealth for the decade ending in the year 1885 (unless otherwise provided by the legislature), see St. 1876, c. 189. For Suffolk Co., the schedule is as follows:—

CITIES AND TOWNS.	Polls.	Property.	Tax of \$1,000, includ'g polls at one-tenth of a mill each.
Boston	84,684	\$795,638,935 00	\$412 74
Chelsea	5,374	18,270,619 00	9 82
Revere	404	1,971,955 00	1 04
Winthrop	167	1,674,126 00	56
	90,629	\$816,955,635 00	\$424 16

48. The secretary of the commonwealth shall cause to be printed and bound in the books to be furnished for the use of the assessors, a copy of this act, and such certificates as are required by the same and by the General Statutes to be signed by the assessors, together with such explanatory notes as may by him be deemed expedient, for the purpose of securing uniformity of returns under the several headings; and he shall compile and cause to be printed annually, for the use of the legislature, the aggregate returns from the cities and towns in the commonwealth, arranged by counties, so as to exhibit the total valuation of the towns, cities, counties, and state.

Secretary shall furnish books, etc., and cause returns to be printed.
1861, c. 167, § 4.

49. If the assessors of any city or town shall neglect to comply with the requirements of sections forty-six and forty-seven, each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars.

Penalty for neglect of assessors.
Ibid. § 5.

RETURNS OF PROPERTY EXEMPT.

50. It shall be the duty of the assessors of each city and town in each year to enter upon the valuation list of their respective city or town, in the appropriate columns after the enumeration of the taxable persons and estates therein contained, a statement and description of all the property and estate, and the fair ratable value thereof situate in such city or town, or which would be taxable there but for the provisions of the third, seventh and ninth divisions of section five of chapter eleven of the General Statutes [see pp. 802, 803 and 804,] with the names of the persons or corporations owning the same, and the purpose for which it is used, which are exempted from taxation by the foregoing provisions of law, with a reference to the law by which such exemption is allowed.

Assessors to prepare statement of certain property exempt from taxation.
1874, c. 227, § 1.

51. The assessors of each city or town shall, on or before the first day of October in each year, make and forward to the tax commissioner a statement showing the whole amount of property enumerated in the first section, and the amount in each class, and stating separately the aggregate amount belonging to each of the four classes embraced in the third division of the fifth section of chapter eleven of the General Statutes [see p. 802].

Statement to be forwarded to tax commissioner.
Ibid. § 2.

CAUSE OF DIMINUTION OF VALUES TO BE STATED.

When there is a diminution in yearly valuation, cause thereof to be stated by assess-

ors.

1864, c. 210, § 3.

See § 60.

52. Whenever it shall have been ascertained by the assessors of any city or town that the aggregate values of their city or town respectively, have been diminished since the first day of May of the preceding year, they shall return, with the table of aggregates or books, which they are required by the act of the year one thousand eight hundred and sixty-one, entitled "an act to secure a uniform description and appraisal of estates in the commonwealth, for the purposes of taxation," and the several acts in addition thereto, to deposit in the office of the secretary, a statement in writing, under oath, of the causes which, in their opinion, have produced such diminution.

Penalty for neglect of assessors.

Ibid. § 4.

53. If the assessors of any city or town shall neglect to comply with the requirements of this act, [1864 c. 210] each assessor so neglecting shall forfeit a sum not exceeding two hundred dollars.

AMOUNT OF TAXES TO BE ASSESSED.

Taxes to be assessed equal to aggregate of all sums appropriated, etc., since last annual assessment.

1875, c. 209, § 1.

54. The assessors of cities and towns shall each year assess taxes to an amount not less than the aggregate of all sums appropriated, granted or lawfully expended by their respective cities or towns since the last preceding annual assessment and not provided for therein; and of all sums which are required by law to be raised by taxation by the said cities or towns during said year; and of all sums which are necessary to satisfy final judgments recovered against the said cities or towns; but such assessments shall not include sums for the payment of which cities or towns have voted to contract debts according to the provisions of the third section of this act; and the assessors may deduct from the amount required to be assessed, the amount of all the estimated receipts of their respective cities or towns (except from loans or taxes) which are lawfully applicable to the payment of the expenditure of the year; but such deduction shall not exceed the amount of such receipts during the preceding year; and such assessments shall be made in the manner provided by law for the assessment of taxes; and any assessor wilfully neglecting to make

an assessment required by this act shall be subject to the penalties provided by law for neglecting to assess taxes.¹

55. The assessors, when they think it convenient, may include in the same assessment their state, county, and town taxes, or any two of them.

56. In the city of Boston, all taxes assessed for city or county purposes may be assessed separately, as county taxes and as city taxes, or under the denomination of city taxes only, as the city council from time to time directs. Chelsea, Revere and Winthrop shall not be taxed for county purposes.

57. The assessors shall assess upon the polls, as nearly as may be, one-sixth part of the whole sum to be raised; but the whole poll tax assessed in one year upon an individual for town, county and state purposes, including highway taxes, shall not exceed two dollars; and the residue of such whole sum shall be apportioned upon property, as provided in this chapter.

58. They may add to the amount of a tax to be assessed such sum, not exceeding five per centum thereof, as any fractional divisions of the amount may render convenient in the apportionment.

LIST OF THE VALUATIONS.

59. They shall make a list of the valuation and the assessment thereon, and, before the taxes assessed are committed for collection, shall deposit the same, or an attested copy thereof, in their office, or, if there is no office, with their chairman, for public inspection.

60. The first part of the list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; and shall contain, in separate columns, the following particulars —

The names of the inhabitants assessed; and opposite to their names, —

The number of polls.

The amount of their poll tax.

The description of their real estate.

State, county, and town taxes in one assessment.

G. S. c. 11, § 29. County and city taxes in Boston, how assessed. Chelsea, etc., exempt.

Ibid. § 30. 21 Pick. 64.

Proportions to be assessed on polls and property.

Ibid. § 31.

1876, c. 88.

9 Gray, 38.

15 Gray, 42.

1 Allen, 319.

Assessors may add five per cent. for convenience of apportionment.

G. S. c. 11, § 32. 15 Mass. 144. 8 Pick. 408.

Assessors to deposit a copy of valuation in office.

Ibid. § 33.

2 Gray, 298.

2 Allen, 594.

102 Mass. 148.

What shall be contained in valuation.

Ibid. § 34.

16 Gray, 293.

2 Allen, 594.

102 Mass. 148.

The estates of inhabitants.

Ibid. § 34.

21 Pick. 64.

6 Met. 470.

7 Gray, 128.

¹ This section is extracted from the "act to regulate and limit municipal indebtedness." For the act in full, see "Finance," p. 303, *ante*.

G. S. c. 11, § 34.

The true value of their real estate.

The tax assessed on such real estate.

The description of their personal property.

The true value of their personal property.

The tax on their personal property.

The sum total of each person's tax.

The second part shall exhibit the valuation and assessment of the estates of non-resident owners; and shall contain, in separate columns, the following particulars, to wit:—

The estate of non-residents.

The names of the non-resident owners of the property assessed, or such description of them as can be given.

Their places of abode, if known.

The description of their estate.

The true value of such estate.

The tax thereon.

Form of tax list for collectors.

Ibid. § 35.

9 Pick. 97.

2 Gray, 298.

61. The tax list submitted to the collectors shall be in substance as follows:—

Names.	No. of Polls.	Poll Tax.	Tax on Real Estate.	Tax on Personal Property.	Total.	Time when paid.
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NON-RESIDENTS.

Names.	Places of abode, if known.	Tax.	
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Valuation list to be sworn to by assessors.
Ibid. § 36.

62. The assessors, or other persons empowered to assess the taxes in a city or town, shall, at the close of said valuation list, subscribe and take the following oath:—

“We (the assessors, or mayor and aldermen, as the case may be, of ,) do hereby solemnly swear that the foregoing list is a full and true list of the names of all persons known to us, who are liable to taxation in , (here insert the name of the city or town) during the present year; and that the real and personal estate contained in said list, and assessed upon each individual in said list, is a full and accurate assessment upon all the property of each individual, liable to taxation, at its full and fair cash value, according to our best knowledge and belief.”

Penalty on assessors omitting to take oath.

63. Any assessor, or other person assessing taxes in a city or town, who omits to take and subscribe the oath prescribed in the

preceding section, shall be punished by a fine of ten dollars; but the omission to take and subscribe said oath shall not prevent the collection of a tax otherwise legally assessed. G. S. c. 11, § 37.

LISTS TO BE COMMITTED TO COLLECTOR.

64. The assessors shall, within a reasonable time, commit said tax list, with their warrant, to collector, or if no collector is chosen, to a constable, or if there is no constable, to the sheriff or his deputy for collection. Assessors to commit lists to collectors, etc. Ibid. § 38. 13 Met. 85. 6 Gray 387, 502. 99 Mass. 472.

65. The warrant shall specify the duties of the collector as prescribed by law in the collection of taxes; the times when, and the persons to whom, he shall pay them in; shall be substantially in the form heretofore used, and need not be under seal. Contents and form of warrant. Ibid. § 39. 1 Met. 323. 6 Met. 345. 13 Met. 85.

66. When a warrant issued for the collection of taxes is lost or destroyed, the assessors may issue a new warrant therefor, which shall have the same force and effect as the original warrant. If warrant is lost, etc, new one may issue. Ibid. § 40.

DISCOUNTS.

67. Towns, at their annual meeting, and city councils of cities, may allow a discount of such sums as they think expedient to persons making voluntary payment of their taxes within such periods of time as they prescribe. In such case, the collectors shall make such discount accordingly. Discounts. Ibid. § 41. 2 Allen, 594. 13 Gray, 476.

68. When such discount is allowed, the assessors, at the time of committing their warrant to the collector, shall post up, in one or more public places within the city or town, notice of the rates of discount. Discount rates to be posted up. Ibid. § 42.

ABATEMENTS.

69. Any person aggrieved by the taxes assessed upon him may apply to the assessors for an abatement thereof; and, if he makes it appear that he is taxed at more than his just proportion, they shall make a reasonable abatement. Abatements. Ibid. § 43.*

*6 Pick. 98; 12 Pick. 7; 21 Pick. 64; 2 Gray, 494; 8 Gray, 509; 13 Gray, 321; 3 Allen, 546; 12 Allen, 612; 13 Allen, 119; 9 Met. 99, 205; 5 Cush. 93; 7 Cush. 273; 8 Cush. 55, 66; 101 Mass. 87; 112 Mass. 206; 112 Mass. 218.

Costs before
abatement, etc.
G. S. c. 11, § 44.

If assessors re-
fuse to abate,
etc.
Ibid. § 45.
6 Pick. 98.
7 Cush. 273.
8 Cush. 55.
8 Gray, 509.
6 Allen, 131.
112 Mass. 206.
112 Mass. 218.

Street commis-
sioners of Bos-
ton to have
power of abate-
ment.
1870, c. 370.

No abatement
unless, etc.
G. S. c. 11, § 46.*

When lists not
brought in, no
abatement un-
less, etc.
1865, c. 121, § 1.*

70. If legal costs have accrued before making such abatement, the person applying for the abatement shall pay the same.

71. If the assessors refuse to make an abatement to a person, he may, within one month thereafter, make complaint thereof to the county commissioners by filing the same with their clerk; and if, upon a hearing, it appears that the complainant is over-rated, the commissioners shall make such an abatement as they may deem reasonable.

72. The powers formerly exercised by the board of aldermen of Boston, as county commissioners, in relation to the abatement of taxes, are now exercised by the board of street commissioners.

73. No person shall have an abatement unless he has filed with the assessors a list subscribed by him of his estate liable to taxation, and made oath that it is full and accurate according to his best knowledge and belief. When such list is not filed within the time specified by the assessors for bringing it in, no complaint from the judgment of the assessors shall be sustained by the county commissioners, unless they are satisfied that there was good cause why such list was not seasonably brought in.

74. When the assessors of a city or town have given notice to the inhabitants thereof to bring in *true lists* of all their polls and estates not exempt from taxation, in accordance with the provisions of the twenty-second section of the eleventh chapter of the General Statutes they shall not afterwards abate any part of the tax assessed on personal estate to any person who did not bring in such list within the time specified therefor in such notice, unless such tax exceeds, by more than fifty *per centum*, the amount which would have been assessed to that person on personal estate if he had seasonably brought in said list; and if said tax exceeds by more than fifty *per centum* the said amount, the abatement shall be only of the excess above said fifty *per centum*: *provided, however*, that this act shall not affect any person who can show a reasonable excuse for not seasonably bringing in said list.

* A person cannot have an abatement of tax before filing with the assessors the list required by the General Statutes, c. 11, § 46; although there is good cause why such a list was not seasonably brought in, and although he has offered to make out a schedule of his estate, which the assessors have declined to receive, and has made before them an oral statement of his estate under

75. No abatement shall be allowed to a person unless he makes application therefor within six months after the date of his tax bill.

To be applied for within six months.
G. S. c. 11, § 47.*

76. A person having an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the city or town to the amount of the abatement allowed, together with all charges, except the legal costs provided for in section seventy.

If tax is paid, amount of abatement to be paid out of town treasury.
Ibid. § 48.
3 Allen, 546.
13 Gray, 223.
Party entitled to certificate.
Ibid. § 49.

77. Every person whose tax is abated, shall be entitled to a certificate thereof from the assessors, or clerk of the commissioners, or other proper officer.

RESPONSIBILITY OF ASSESSORS.

78. The assessors shall not be responsible for the assessment of a tax in a city, town, parish, religious society, or school district, for which they are assessors, when such tax is assessed by them in pursuance of a vote for that purpose, certified to them by the clerk or other proper officer of such city, town, parish, religious society, or school district, except for the want of integrity and fidelity on their own part.

Assessors to be responsible only for fidelity, etc.
Ibid. § 51.
4 Pick. 399.
5 Pick. 451, 498.
7 Pick. 106.
21 Pick. 382.
4 Met. 599.
11 Met. 339.
4 Cush. 488.
4 Gray, 42.
97 Mass. 424.
98 Mass. 469.
99 Mass. 208.

PAY OF ASSESSORS.

79. Each assessor shall be paid, by his city or town, two dollars and fifty cents a day, for every whole day that he is employed in that service, with such other compensation as the city or town shall allow.

Pay of assessors.
Ibid. § 52.
1873, c. 156.
3 Met. 431.

oath. The statute of 1865, c. 121, does not dispense with the filing of a sworn list as a necessary preliminary to the abatement of a tax. 101 Mass. 87. A person can have an abatement of his tax assessed upon property erroneously included by him in his sworn return. 109 Mass. 270; see also 112 Mass. 218; 4 Pick. 399; 5 Pick. 451, 498; 7 Pick. 106; 21 Pick. 382; 4 Met. 599; 11 Met. 339; 5 Cush. 97; 6 Cush. 477; 8 Cush. 63; 5 Gray, 365; 8 Gray, 509; 13 Gray, 321; 1 Allen, 199; 3 Allen, 546; 101 Mass. 87.

* A tax assessed in one year may be abated by the assessors of the following year, if the applicant for abatement has complied with the laws as to the time and manner of his application. 102 Mass. 348.

REASSESSMENT OF TAXES.

Taxes invalid,
etc., except poll
taxes; may be
reassessed.

G. S. c. 11, § 53.

13 Allen, 269.

97 Mass. 322.

99 Mass. 32, 208.

102 Mass. 72.

80. Every tax, except a poll tax, which is invalid by reason of any error or irregularity in the assessment, and which has not been paid, or which has been recovered back, may be reassessed by the assessors for the time being, to the just amount to which, and upon the estate or to the person to whom, such tax ought at first to have been assessed, whether such person has continued an inhabitant of the same city or town, or not.¹

ILLEGAL ASSESSMENTS.

Tax to be void
to extent of
illegal excess.

Ibid. § 54.

See G. S. c. 12,
§ 56.

99 Mass. 208.

81. If, through any erroneous or illegal assessment or apportionment of taxes, a party is assessed more or less than his due proportion, the tax and assessment shall be void only to the extent of the illegal excess.

ESTATES OMITTED.

Estates omitted,
when may be
taxed.

1868, c. 320, § 1.

See § 15, *ante*.

82. When the assessors of any city or town, after the time when their warrant has been committed to the collector of taxes, shall discover that the real or personal estate of any person, to an amount not less than one hundred dollars, and liable to taxation, has been omitted from the last annual assessment of taxes in such city or town, said assessors shall proceed forthwith to assess such person for such estate in like manner as he should have been assessed in such last annual assessment. The taxes so assessed shall be entered in the tax list of the collector of the city or town, and he shall collect and pay over the same in the manner specified in his warrant: *provided*, that such tax shall not be assessed after the fifteenth day of September for any such omission.

General tax not
to be affected.

Ibid. § 2.

83. No tax of any city or town shall be invalidated by reason that, in consequence of the provisions of this act, the whole amount of the taxes assessed in such city or town shall exceed the amount authorized by law to be raised.

¹ For collection of reassessed taxes, see § 25 p. 844, *post*.

TAXATION OF BANK SHARES.

84. All the shares of stock in banks, whether of issue or not, existing by authority of the United States, or of this commonwealth, and located within this commonwealth, including shares in the capital stock of the Mercantile savings institution in the city of Boston, shall be assessed to the owners thereof in the cities or towns where such banks are located, and not elsewhere, in the assessment of all state, county and town taxes imposed and levied in such place by the authority of law, whether such owner is a resident of said city or town, or not, at the fair cash value of such shares on the first day of May of the year in which the tax shall be assessed, first deducting therefrom the proportionate part of the value of the real estate belonging to the bank, at the same rate, and no greater, than that at which other moneyed capital in the hands of citizens and subject to taxation is by law assessed.¹ And the persons or corporations who appear from the records of the banks to be the owners of shares at the close of the business day next preceding the first day of May in each year, shall be taken and deemed to be the owners thereof for the purposes of this section.

Tax upon bank shares to be assessed to owners in towns where bank is located.
1873, c. 315, § 1.
14 Allen, 359.
99 Mass. 141.
104 Mass. 586.
3 Wall. 585.

85. It shall be the duty of every such bank or other corporation to pay to the collector or other person authorized to collect the taxes of the city or town in which such bank or other corporation is located, at the time in each year when other taxes assessed in the said city or town become due, the amount of the tax so assessed in such year upon the shares in such bank or other corporation. If such tax shall not be so paid, the said bank or other corporation shall be liable for the same; and the said tax, with

Bank to pay taxes to collector of town where bank is located.
Ibid. § 2.

¹ A state may tax shares held in national banks, organized under United States Statutes of 1864, c. 106, and may authorize the assessment of such tax in the city or town within the same state where the owner resides. 14 Allen, 359. But the state cannot impose a tax on the shares, owned by one of its inhabitants, of a national bank located in another state. 99 Mass. 141.

It has been decided by the supreme court of the United States recently that the shares in national banks are taxable to the owners thereof at their market value, *without* any deduction on account of the investments of the bank in United States securities. 3 Wallace, 573; 23 Wallace, 480.

1873, c. 315, § 2. interest thereon at the rate of twelve per centum per annum from the day when the tax became due, may be recovered in an action of contract brought by the treasurer of such city or town.

Corporation to have lien upon shares for taxes paid.
Ibid. § 3.

86. The shares of such banks or other corporations shall be subject to the tax paid thereon by the corporation or the officers thereof, and the corporation and the officers thereof shall have a lien on all the shares in such bank or other corporation, and on all the rights and property of the shareholders in the corporate property for the payment of said taxes.

Rate of taxation in places where banks are located.
Ibid. § 4.
101 Mass. 575.

87. Assessors of cities and towns in which any national bank or banking association is located, for the purpose of ascertaining the rate at which taxes shall be assessed, shall omit from the valuation upon which the rate is to be based the value of all shares held by non-residents of said cities and towns, and no tax of any city or town shall be invalidated by reason of any excess of the amount thereof over the amount to be raised in consequence of the provisions of this act.

List of shareholders, how returned.
1865, c. 242, § 1.

88. The assessors of every city or town in this commonwealth, in which any association for the purpose of banking is or shall be established by authority of the United States, shall annually, between the first and tenth day of May, obtain from the proper officers of such association a full and correct list of the names and residences of all shareholders in the association, and the number of shares held by each; they shall also ascertain the amount of the capital stock of such association, the par value and the fair market value of each share, and the amount and value of real estate held and owned by such associations, and where the same is located.

Cashier to make sworn statement to assessors, of names, etc., of shareholders.
1873, c. 315, § 5.

89. It shall be the duty of the cashier of every such bank to make and deliver to the assessors of the city or town in which such bank is located, on or before the tenth day of May in each year, a statement verified by the oath of such cashier, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of the business day next preceding the first day of May, as the same then appeared on the books of said bank. In case the cashier shall fail to make such statement, the assessors of the city or town in which the bank is located shall forthwith, upon such failure, proceed to obtain a list of shareholders, with the residence of and number of shares belonging to each.

Assessors to obtain list of shareholders if cashier neglects.

In either case the assessors of each city and town shall, immediately upon obtaining such list or statement, transmit to the tax commissioner a true copy of the same, and shall further, by notice in writing, inform said commissioner of the rate per centum upon the valuation of the city or town of the total tax in such city or town for the year, immediately upon the ascertainment thereof, and also of the amount assessed upon the shares of each bank located therein, under the provisions of this act. The assessors of the city of Boston shall be entitled to have the time for the services and returns required by this act, extended for a period of twenty days from the respective dates therein fixed.

Assessors to transmit statement to tax commissioner.
1873, c. 315, § 5.

1865, c. 242, § 5.

90. Said commissioner shall thereupon, as soon as may be, determine from the returns provided for by section five of this act, and otherwise, the proportionate amount of the tax so assessed upon the shares in each of said banks which has been assessed upon shares, which according to the provisions of chapter eleven of the General Statutes would not be taxable in said city or town, which amounts, as finally determined under the provisions of this act, shall be a charge to said city or town as an offset against any payments to be made from the treasurer of the commonwealth to said city or town.

Commissioner to determine amount of offset against payments to be made to the town.
1873, c. 315, § 6.

91. Said commissioner shall, in like manner, determine the proportionate amount of tax so assessed upon shares in each of said banks, which, according to the provisions of chapter eleven of the General Statutes, would be taxable in each city or town in this commonwealth other than that in which the bank is located, which amounts, as finally determined under the provisions of this act, shall become a credit to such city or town.

Commissioner to determine amount which shall become a credit to town.
Ibid. § 7.

92. Said commissioners shall, by written or printed notice, delivered at the assessors' office or sent by mail, inform the assessors of each city or town affected thereby, of the aggregate amount of charges and credits against and in favor of such city or town under the sixth and seventh sections of this act [§§ 90, 91], as determined by him, forthwith, upon the determination thereof. From this determination an appeal may be made by said assessors, within ten days from the date of said notice, to the board of appeal created under the thirteenth section of the two hundred and eighty-third chapter of the acts of the year eighteen hundred and sixty-five,

Commissioner to inform assessors of the aggregate amount of charges and credits.
Ibid. § 8.

Right of appeal from determination of assessors
1865, c. 283, § 13

1865, c. 283, § 13. consisting of the treasurer and auditor and one member of the council named by the governor, which board shall hear such appeal, decide the matter in question, and notify said commissioner and the party appealing thereof, and their decision shall be final.

Commissioner to certify to state treasurer aggregate amount of charges and credits. 1873, c. 315, § 9. 93. Said commissioner shall, at the expiration of ten days after notice given, as provided in the foregoing section, or upon being informed of the decision of the board of appeal, if an appeal is made, certify to the treasurer and receiver-general the aggregate amount of charges mentioned in section six [§ 90 of digest] against each city and town in the commonwealth, and also the aggregate of credits mentioned in the seventh section [§ 91 of digest] in favor of each city or town, as finally determined under the provisions of section six, seven and eight, and the treasurer shall thereupon withhold out of any sums of money which are or may become payable out of the state treasury to any city or town against which a charge is certified, the amount so certified; and shall allow or pay over to each city or town in favor of which a credit is certified the amount so certified.

Allowance of one per centum for expense of assessing and collecting tax. Ibid. § 10. 94. In the adjustment and determination of amounts due under the provisions of this act, an allowance of one per centum upon the amount assessed and collected under this act shall be made for the expenses of assessing and collecting the same, and no city or town shall be entitled to any allowance of credits to payments under this act, or under the two hundred and eighty-third chapter of the acts of the year eighteen hundred and sixty-five, in any year, until the assessors thereof shall have complied with the requirements of this act.

Taxation under act of 1865. Ibid. § 11. 95. No bank, the shares in which are made taxable by this act, shall be subject to taxation under the provisions of chapter two hundred and eighty-three of the acts of the year eighteen hundred and sixty-five, and the acts in addition thereto, nor shall the shareholders be taxable for state, county or town purposes, except under the provisions of this act in respect to their shares therein.

Owner of shares to be furnished with certificate of exemption from taxation. Ibid. § 14. 96. It shall be the duty of the assessors of each city or town, upon request of any person resident in such city or town, who is the owner of any shares in such banks or other corporations which, under the provisions of the tenth and thirteenth divisions of section five of chapter eleven of the General Statutes, would be entitled to exemption from taxation, to give such owner a certifi-

cate setting forth such fact, and it shall be the duty of the treasurer of such city or town, upon request therefor and the deposit with him of such certificate, to pay over to such owner the amount so collected in respect of such shares, immediately upon the allowance of the amount which shall be made to such city or town under the provisions of this act. 1873, c. 315, § 14.

RETURNS OF CORPORATIONS.

97. Every corporation established within this commonwealth by special charter, or organized under the general laws thereof, which holds on the first day of May, in any year, shares of stock in corporations other than those subject to taxation under the provisions of chapter two hundred and eighty-three of the acts of the year one thousand eight hundred and sixty-five [see § 99] and acts in amendment thereof, or bonds of any description, as collateral security for borrowed money, or other liability, shall annually, between the first and tenth day of May, return to the tax commissioner the whole number of such shares and bonds so held, the names and residences of the persons pledging the same, and the number, denomination and the par value and cash market value, if known, of the shares and bonds pledged by each; and the tax commissioner shall, on or before the twentieth day of June in each year, transmit to the assessors of the several cities and towns of the commonwealth, a true copy of the list furnished by such corporations. Corporations holding stock, etc., as collateral, to make returns to tax commissioner. 1870, c. 144, § 1.

98. Any corporation neglecting or refusing to make the returns required by this act, or wilfully making a return which is materially false or defective, shall forfeit for each offence a sum of not less than fifty nor more than one thousand dollars, to be recovered by an action of tort to the use of the city or town in which the person pledging such stock or bonds resides. Tax commissioner to transmit lists to assessors. Penalty for not making returns. Ibid. § 2.

99. The assessors of the several cities and towns shall, annually, on or before the first Monday of August, return to the tax commissioner hereinafter named, the names of all corporations, except banks of issue and deposit, having a capital stock divided into shares, chartered by this commonwealth, or organized under the general laws, for purposes of business or profit, and established Assessors to return annually to tax commissioner names of all corporations in town, etc. 1865, c. 283, § 1. 1870, c. 76.

1865, c. 283, §1.
 1870, c. 76.
 99 Mass. 146.
 98 Mass. 25.
 104 Mass. 586.
 105 Mass. 526.

in their respective cities and towns, or owning real estate therein, and a statement in detail of the works, structures, real estate, and machinery owned by each of said corporations, and situated in such city or town, with the value thereof, on the first day of May preceding, and the amount at which the same is assessed in said city or town, for the then current year. They shall also, at the same time, return to said tax commissioner the amount of taxes laid, or voted to be laid, within said city or town, for the then current year, for state, county, and town purposes, including highway taxes;¹ also the aggregate amount of the assets of their respective cities or towns, and the amount of indebtedness of such cities or towns, for which notes, bonds, or other similar evidences of debt, the payment of which is not provided for by the taxation of the then current year, were outstanding on the first of May then next preceding, with a concise statement of the various purposes for which such indebtedness was incurred, and the amount incurred for each purpose.

TAX ON SHARES OF CORPORATIONS.

Shares taxed hereunder, to be exempt from other tax; towns to receive sum paid by residents. Corporations established by, or under laws of commonwealth, for mining, etc., elsewhere; or by other state, with office in Mass., to make semi-annual returns, and pay tax.

100. No taxes shall be assessed in any city or town for state, county, or town purposes, upon the shares in the capital stock of said corporations: *provided, however*, that the shares of every corporation chartered by this commonwealth, or organized under the general laws, for the purpose of engaging, without the limits of the commonwealth, in the business of coal mining, or other mining, quarrying, or extracting carbonaceous oils from the earth, or for the purpose of purchasing, selling, or holding mines or lands without the commonwealth; and of every such company or association, incorporated elsewhere, and having an office or place of business within the commonwealth for the direction of its affairs

¹ Under this section assessors are required to return: —

1. Every Massachusetts business corporation *established* in the town, whether owning any assessable property there or not.
2. Every Massachusetts business corporation owning any real estate or machinery in the town.
3. Every railroad corporation assessed in the town; and also,
4. The *whole amount* of taxes laid, or voted to be laid, upon the *whole valuation of the town*, and not merely the amount laid upon the valuation of *corporation property only*.

or transfer of shares, shall be included in the valuation of the personal property of shareholders resident within the commonwealth for the assessment of all taxes imposed and levied by authority of law by cities and towns. And nothing in this section shall be construed to exempt the owners of shares in the capital stock of any corporation from liability to taxation for parish purposes.¹

101. If the assessors of any city or town shall neglect to comply with the requirements of this act [1865, c. 283] each assessor so neglecting shall forfeit the sum of one hundred dollars.

Penalties.
1865, c. 283, § 14.

ASSESSORS TO BE FURNISHED WITH LIST OF CORPORATIONS TAXABLE.

102. The tax commissioner shall, annually, on or before the twentieth day of June, in each year, cause to be forwarded to the assessors of every city and town in this commonwealth a list of all Massachusetts corporations known to him to be taxable on the first day of May next preceding said twentieth day of June, under chapter two hundred and eighty-three of the acts of the year eighteen hundred and sixty-five; and such other information in his possession as, in his judgment, will assist the assessors of the cities and towns in the assessment of taxes.

Tax commissioner to forward to assessors lists of all corporations taxable, etc.
1867, c. 188, § 2.
1865, c. 283.

¹The shares in corporations organized under or chartered by law of this commonwealth for the purposes of business or profit in this commonwealth, are, with two exceptions, *not* taxable by town or city assessors unless for school district or parish purposes. Such corporations are taxed upon their franchise by the state under the provisions of 1865, c. 283, at a valuation and rate to be ascertained by the tax commissioner under said act. This tax is collected directly of the corporation, and so much of it as is in proportion to the number of shares actually owned in each city and town in the commonwealth is allowed to said city or town respectively, in the payment of its state tax. Shares in the guaranty capital of permanent funds acquired by mutual *marine*, mutual *fire and marine* or mutual *fire* insurance companies organized under the provisions of acts of the year 1872, c. 375, are taxable under the provisions of chapter 283 of the acts of the year 1865, and are therefore not taxable to holders by the local assessors. Shares in the guaranty capital of mutual *life* insurance companies are taxable by assessors to the individual shareholders. Such shares should be included by citizens in their returns of taxable property to assessors. Whether such corporations should return their guaranty stockholders to the assessors, see the decision in 98 Mass. 25.

TAX ON SAVINGS BANKS.

Savings banks
to pay tax of
three-quarters of
one per cent. on
deposits.
1868, c. 315.
G. S. c. 57, §§ 135,
135.
1862, c. 224, § 4.
1863, c. 164.
1865, c. 267.
5 Allen, 428.
12 Allen, 312.
6 Wall, 594-611.

103. Every savings bank and institution for saving, incorporated under the laws of this commonwealth, including the Mercantile savings institution in the city of Boston, shall pay to the treasurer of the commonwealth a tax on account of its depositors of three quarters of one per centum per annum on the amount of its deposits, to be assessed, one-half of said annual tax on the average amount of its deposits for the six months preceding the first day of May, and the other on the average amount of its deposits for the six months preceding the first day of November.

RETURNS CONCERNING STEAM BOILERS.

Returns to be
made by assess-
ors to tax com-
missioner concern-
ing steam
boilers.
1873, c. 321.

104. The assessors of each city and town shall, in each year, at the time of making the returns required by the first section of chapter two hundred and eighty-three of the acts of the year eighteen hundred and sixty-five [§ 99], return to the tax commissioner a statement showing the whole number of steam boilers located in their respective cities and towns on the first day of May then next preceding; by whom and when built, and the aggregate estimated amount of horse-power which such boilers are capable of furnishing. Such return shall also state the number of accidents causing permanent injuries to persons which have arisen from the use of such boilers during the year, with the causes thereof, as far as may be ascertained by the assessors. The tax commissioner shall in due season forward to the assessors, blanks suitable for making the

Commissioner
to furnish
blanks for re-

Shares of the capital stock of *foreign corporations*, if owned by citizens of this commonwealth, are taxable to them here by the local assessors for their full value without deducting the value of the machinery and real estate belonging to such corporation, and taxed to it at the place where it is established. See *Dwight vs. Boston*, 12 Allen, 316. Shares in *national banks* located in this state are taxable in the town or city in which the bank is located.

Shares in *associations* like the McKay Sewing Machine Association are not taxable as shares in corporations. The question whether the interests of shareholders are taxable as trust estates is not decided.

Trust funds held by the New England Trust Company and other trust companies chartered since 1871, are taxable under charter provisions similar to those of 1865, c. 283, and are therefore exempt from local taxation.

returns herein required, and shall include in his annual report to the legislature a tabular statement of statistics derived from such returns.

turns and make report to legislature.
1873, c. 321.

POWER OF CITY COUNCIL TO ASSESS TAXES.

105. The city council shall have power, from time to time, to lay and assess taxes for all purposes for which towns are by law required or authorized to assess and grant money, and also for all purposes for which county taxes may be levied and assessed, so long as other towns in the county shall not be liable to taxation for county purposes. But in the assessment and apportionment of all such taxes upon the polls and estates of all persons liable to contribute thereto, the same rules and regulations shall be observed as are now established by the laws of this commonwealth, or may be hereafter enacted, relative to the assessment and apportionment of town taxes. The said city council shall also have power to provide for the assessment and collection of such taxes, and to make appropriations of all public moneys, and provide for the disbursement thereof, and take suitable measures to insure a just and prompt account thereof; and for these purposes may either elect such assessors and assistant assessors as may be needful, or provide for the appointment or election of the same, or any of them, by the mayor and aldermen, or by the citizens, as in their judgment may be most conducive to the public good, and may also require of all persons entrusted with the collection, custody, or disbursement of public moneys, such bonds, with such conditions and such sureties as the case may, in their judgment, require.

Powers of the city council in relation to the assessment of city and county taxes.
1821, c. 110, § 15.
1822, c. 85.
1854, c. 448, § 36.
See *ante*, p. 14, § 36.
Same rules to be observed, as in relation to town taxes.
Charter, *ante*, p. 14, § 36.
1821, c. 110, § 15.
City council may provide for assessment and collection of taxes.
Charter, *ante*, pp. 14, 15, §§ 36, 37.
3 Cush. 567.
May elect assessors, etc., or provide for same.
Charter, see *ante*, p. 14, § 35.
May require bonds.
Ibid.

106. Cities and towns may, at legal meetings, grant and vote such sums as they judge necessary for the following purposes: —

For the support of town schools.

For the relief, support, maintenance, and employment of the poor.

For laying out, discontinuing, making, altering, and repairing highways and town-ways, and for labor and materials to be used thereon.

*13 Mass. 272; 6 Pick. 101; 7 Pick. 18; 11 Pick. 396; 12 Pick. 227; 18 Pick. 566; 19 Pick. 435; 21 Pick. 64; 23 Pick. 71; 3 Met. 163; 10 Met. 508; 3 Cush. 530; 10 Cush. 252; 12 Cush. 103; 4 Gray, 602; 11 Gray, 340; 1 Allen, 103; 3 Allen, 9; 10 Allen, 570; 103 Mass. 94; 103 Mass. 408; 109 Mass. 311.

Cities and towns may grant money for certain purposes.
G. S. c. 18, § 10.*

G. S. c. 18, § 10. For procuring the writing and publishing of their town histories.

For burial-grounds.

For encouraging the destruction of noxious animals.

For all other necessary charges arising therein.

1864, c. 100. For the purpose of erecting monuments in memory of their soldiers who died in the service of the country during the late war. Also for the purpose of erecting headstones or other monuments at the graves of persons who served on their quota in the military or naval service of the United States during the late war.

1870, c. 169. For the purpose of keeping in repair or decorating the graves, within their limits, of soldiers or sailors who have died in the military or naval service of the United States, or the monuments or other memorials erected to their memory.

1872, c. 324. To aid disabled soldiers and sailors and their families and the families of the slain.

1866, c. 222. For the establishment, maintenance or increase of a public library, and for erecting and providing suitable buildings or rooms therefor.

1874, c. 112. For the purpose of celebrating any centennial anniversary of its own corporation, a sum not exceeding one-tenth of one per cent. of its assessed valuation for the year last preceding.

1869, c. 132. For the conveyance of pupils to and from the public schools.

1869, c. 206. For the purpose of procuring the detection and apprehension of persons committing a felony.

1869, c. 381. To encourage the planting of shade trees.

1872, c. 84. To establish and maintain public drinking-troughs, wells and fountains.

1874, c. 214. To erect and maintain public baths and washhouses.

Cities may appropriate money for certain purposes. 1861, c. 165, § 1. 1874, c. 330, § 83. 1 Allen, 103. 98 Mass. 219. 106 Mass. 114. 107. Any city, by vote of the city council thereof, in addition to the sums heretofore authorized by law to be raised and appropriated, may appropriate any funds in its treasury, or raise money by taxation, and appropriate the same for the celebration of holidays, and for other purposes of a public nature: *provided*, that such appropriations shall be made by vote of two-thirds of the members of each branch of the city council present, and voting by yea and nay vote, and that the amount of such appropriations made by any city, in any one year,

shall not exceed one-fiftieth of one per cent. of its valuation for the same year.¹

COLLECTION OF TAXES.

1. Every collector of taxes,² constable, sheriff, or deputy sheriff, receiving a tax list and warrant from the assessors, shall proceed to collect the taxes therein mentioned, according to the warrant.³

Collectors to collect taxes.
G. S. c. 12, § 1.
7 Gray, 12.
102 Mass. 72, 73.

2. The collector shall, unless removed from office as hereinafter provided, complete the collection of taxes committed to him, although his term of office expires before such completion.

To complete collections through term expire.
G. S. c. 12, § 2.

3. Collectors shall, before distraining the goods of a person for his tax, demand payment thereof from such person, either personally, or at his usual place of abode, if to be found within their precincts.

Demand to be made.
Ibid. § 3.
1 Met. 328.

4. When the credit of a person taxed is considered doubtful by the assessors, they may, by a special warrant, order the collector forthwith to compel payment, by distress or imprisonment, whether the tax is made payable immediately, at a future day, by instalments, or otherwise.

When credit doubtful, taxes may be collected forthwith.
Ibid. § 4.
1874, c. 238.

5. If a person claims the benefit of an abatement, he shall exhibit to the collector demanding his taxes, a certificate of such abatement, from the assessors, or other proper officer, as provided in chapter eleven of the General Statutes; and shall be liable to pay all costs and officers' fees incurred before exhibiting such certificate.

Persons claiming abatement must produce certificate.
Liable to costs.
G. S. c. 12, § 5.
See *ante*, p. 827.
§ 77.
9 Met. 504.

¹ The portion of this section relating to armories was superseded by St. 1874, c. 320, § 83. See "*Militia*," *ante*.

² For provisions in relation to the election of collector of the city of Boston, see "*Finance*," pp. 302, 303, p. 528.

³ The S. J. C. has no jurisdiction in equity to enjoin a city or its collector against collecting a tax which a complainant alleges has been illegally assessed upon him by the board of assessors. 97 Mass. 152. A constable and deputy collector, in serving a warrant for the collection of taxes, is a public officer, and not a servant of the city; and if he illegally arrests the person named in the warrant, who thereupon pays under protest a tax legally due, the person so paying cannot maintain an action against the city to recover it back. 112 Mass. 75. A tax warrant good upon its face protects the collector acting under it, notwithstanding any irregularity in the assessment of the tax. 102 Mass. 72, 73.

Errors in names
not to defeat col-
lection.

Ibid. § 6.
6 Met. 474.
12 Cush. 56.
7 Gray, 125.
97 Mass. 321.

Distress and sale
to pay taxes,
except, etc.

Ibid. § 7.
9 Met. 504.
11 Cush. 338.
7 Gray, 133.

Distress, how
long kept, how
advertised and
sold.

Ibid. § 8.
1 Met. 323.
13 Met. 85.
11 Cush. 338.

Sale may be ad-
journed once.
Ibid. § 9.

Seizure of
shares, how
made.

Ibid. § 10.

Sales of shares
seized, how
made.

Ibid. § 11.
4 Cush. 10.
11 Cush. 338.

6. If, in the assessors' list, or in their warrant and list committed to the collectors, there is an error in the name of a person taxed, the tax assessed to him may be collected of the person intended to be taxed, if he is taxable, and can be identified by the assessors.

7. If a person refuses or neglects to pay his tax, the collector shall levy the same by distress or seizure and sale of his goods, including any share or interest he may have as a stockholder in a corporation incorporated under authority of this commonwealth, and excepting the following goods:—

The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for housekeeping necessary for upholding life, and bedding and apparel necessary for himself and family.

8. The collector shall keep the goods distrained, at the expense of the owner, for four days at least, and shall, within seven days after the seizure, sell the same by public auction, for payment of the tax and charges of keeping and sale, having given notice of the sale by posting up a notification thereof in some public place in the city or town, forty-eight hours at least before the sale.

9. The collector may once adjourn such sale, for a time not exceeding three days; he shall forthwith give notice of such adjournment, by posting a notification at the place of sale.

10. The seizure of a share or other interest in a corporation may be made by leaving with any officer of the corporation, with whom a copy of a writ may by law be left when the share of a stockholder is attached on mesne process, an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the tax which the stockholder is to pay, and that, upon his neglect or refusal to pay, the collector has seized such share or interest.

11. The sale of such share or interest shall be made in the manner prescribed by law for the sale of goods by collectors of taxes in like cases, and also subject to the provisions of sections forty-six and forty-seven of chapter one hundred and thirty-three of the General Statutes, respecting sales on executions.

12. If the distress or seizure is sold for more than the tax and charges of keeping and sale, the collector shall return the surplus to the owner, upon demand, with an account in writing of the sale and charges.

Surplus to be returned to owner.
G. S. c. 12, § 12.
5 Gray, 530.

13. Whenever a city or town has fixed a time within which taxes assessed therein shall be paid, such city by its city council, and such town, at the meeting when money is appropriated or raised, may vote that on all taxes remaining unpaid after a certain time, interest shall be paid at a specified rate, not exceeding one per centum per month; and may also vote that on all taxes remaining unpaid after another certain time, interest shall be paid at another specified rate, not exceeding one per centum per month; and the interest accruing under such vote or votes shall be added to, and be a part of, such taxes.

Cities and towns may charge interest on unpaid taxes.
1873, c. 225.

14. It shall be the duty of every bank, whether of issue or not, existing by authority of the United States or of this commonwealth, and located within this commonwealth, or other corporation, to pay to the collector or other person authorized to collect the taxes of the city or town in which such bank or other corporation is located, at the time in each year when other taxes assessed in the said city or town become due, the amount of the tax so assessed in such year upon the shares in such bank or other corporation. If such tax shall not be so paid, the said bank or other corporation shall be liable for the same; and the said tax, with interest thereon at the rate of twelve per centum per annum from the day when the tax became due, may be recovered in an action of contract brought by the treasurer of such city or town.

Bank to pay taxes to collector or of town where bank is located.
1873, c. 315, § 2.

15. If a person refuses or neglects for fourteen days after demand to pay his tax, and the collector cannot find sufficient goods upon which it may be levied, he may take the body of such person and commit him to prison, there to remain until he pays the tax and charges of commitment and imprisonment, or is discharged by order of law.¹

After fourteen days, party may be imprisoned.
G. S. c. 12, § 13.
13 Met. 85.
2 Gray, 238.
7 Gray, 233.
9 Gray, 190.
13 Gray, 93.
3 Allen, 5.
5 Allen, 565.
102 Mass. 72.
5 Hill, 440.
9 Conn. 140.
20 Vt. 397.

16. When the collector commits a person to prison, he shall give the keeper thereof an attested copy of the warrant, with a

¹ Taxes upon personal estate constitute no lien. The liability attaches to the person, and not to the property on account of which the tax is assessed. 103 Mass. 481.

Copy of warrant, etc., to be left with jailer.
G. S. c. 12, § 14.
4 Allen, 5.

certificate thereon, under the hand of the collector, setting forth the sum which such person is to pay as his tax, with the cost of taking and committing him, and that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body.

Persons imprisoned for non-payment of taxes, how discharged.
Ibid. § 15.
See G. S. c. 124.
1862, c. 183, § 9.
See *post*, p. 853, § 67.

17. When a person committed to prison for the non-payment of taxes is unable to pay the same, he shall be entitled to his discharge in like manner as persons committed on execution. The notice required in such case to be given to the creditor may be given to either of the assessors or the collector by whom the party was committed. And the assessors and collector, or any of them, may appear and do all things which a creditor might do in case of arrest on execution.

Collectors, when liable to pay, etc.
Ibid. § 16.
3 Met. 152.

18. If such person is discharged, the collector shall be liable to pay the tax, with the charges of imprisonment, unless he arrested and committed the party within one year after the tax was committed to him to collect, or unless he is exonerated therefrom by the city, town, or parish, to which the tax is due.

Collectors may demand aid. Penalty.
Ibid. § 17.

19. A collector, when resisted or impeded in the exercise of his office, may require any suitable person to aid him therein; and if such person refuses to render such aid he shall forfeit a sum not exceeding ten dollars.

Persons removing from collector's precinct, without paying.
Ibid. § 18.
23 Pick. 235.
15 Gray, 427.
5 Allen, 563.

20. When a person, after the assessment of a tax upon him, removes out of the precinct¹ of the collector without paying his tax, the collector may demand payment thereof wherever such person is found; and in default of payment, the collector may forthwith proceed to collect the tax, by making a distress, or by commitment of such person to the prison of the county where he is found; or the collector may issue his warrant to the sheriff² of the county or his deputy, or to any constable of the place, where such person is found, directing them to distrain the property, or take the body of such person, and to proceed therein in like manner as required of collectors in like cases.

¹ If a person leaves the precinct with the intention of returning at the expiration of six months, it is a removal within the meaning of this section. 23 Pick. 235.

² For proper form of such warrant, see 5 Allen, 563; 15 Gray, 427; 99 Mass. 472.

21. When a person taxed removes as aforesaid, or dies, or neglects to pay his tax for one year after it is committed to the collector, or, being an unmarried woman, marries, before payment of the tax, the collector may, in his own name, maintain an action of contract therefor, in like manner as for his own debt, and he may for that purpose in like manner have a process of foreign attachment against any trustee of such person.

Remedy if persons remove, etc., without paying.
G. S. c. 12, § 19.
6 Mass. 44.
23 Pick. 235.
8 Met. 393.
6 Allen, 558.

22. When a tax is assessed upon the personal estate of a deceased person, the collector may maintain an action of contract therefor in his own name, as for his own debt, against the executor or administrator; and if a tax is so assessed before the appointment of an executor or administrator, he may enforce it against the estate and its representative after such appointment, in like manner as if the assessment had been made subsequently thereto.

Remedy against executors and administrators.
G. S. c. 12, § 20.
97 Mass. 321.

23. When a person is taxed for real estate in his occupation, but of which he is not the owner, the collector, after demand of payment, may levy the tax by distress and sale of the cattle, sheep, horses, swine, or other stock or produce of such estate, belonging to the owner thereof, which within nine months after such assessment is committed to him shall be found upon the premises, in the same manner as if such stock or produce were the property of the person so taxed; but such demand need not be made if the person on whom the tax is assessed resided within the precinct of the collector at the time of the assessment, and subsequently removes therefrom and remains absent three months.

Remedy against persons who are not owners of the real estate taxed to them.
Ibid. § 21.

24. Taxes assessed on real estate shall constitute a lien thereon for two years after they are committed to the collector,¹ and may, with all incidental costs and expenses, be levied by sale thereof, if the tax is not paid within fourteen days after a demand

Taxes to be lien on real estate for two years, etc.
Ibid. § 22.

¹ Where lands are separated either by the use or purpose to which they are devoted, or by their mode of occupation, or are disconnected in location, a tax laid generally upon an entire valuation cannot be made a lien upon each separate parcel, even when all are owned or occupied by the same person. 99 Mass. 29, 32; 13 Pick. 492. The *lien* relates back to and takes effect as of the first day of May in the year for which the taxes are assessed. 110 Mass. 387.

G. S. c. 12, § 22.
 7 Pick. 15.
 13 Pick. 402.
 2 Gray, 185.
 6 Allen, 576.
 99 Mass. 31.
 106 Mass. 29.
 110 Mass. 387.

Taxes re-
 assessed to be a
 lien, unless, etc.
 Ibid. § 23.
 99 Mass. 32.

When taxes
 are reassessed,
 name of person
 originally as-
 sessed to be
 stated in war-
 rant, etc.
 1870, c. 394.
 102 Mass. 12.
 1870, c. 394.
 102 Mass. 72.

Resident mort-
 gagee of real
 estate when to
 be called upon
 for taxes.
 G. S. c. 12, § 24.
 2 Gray, 185.

When non-resi-
 dent appoints at-
 torney, demand
 how made,
 Ibid. § 25.
 2 Gray, 185.

When made,
 collector to wait
 two months.
 Ibid. § 26.

Affidavit of col-
 lector, etc., evi-
 dence of de-
 mand.
 Ibid. § 27.

of payment, made either upon the person taxed, or upon any person occupying the estate; but the collector may sell real estate for taxes after two years have elapsed, unless the estate has been alienated in the mean time.

25. Taxes reassessed on real estate shall constitute a lien thereon from the time they are committed to the collector,¹ unless the estate has been alienated between the first and second assessments; and may be levied as provided in the preceding section.

26. Taxes reassessed under the provisions of section fifty-three of chapter eleven of the General Statutes [see § 80, p. 825, *ante*], shall be committed to, and collected and paid over by, the collector of taxes for the time being, in the same manner as other taxes, except that the name of the person to whom the taxes were originally assessed shall be stated in the warrant; and the bond of such collector shall apply to such reassessed taxes.

27. If a mortgagee of real estate, situated in the place of his residence previously to the assessment of a tax, gives written notice to the clerk of such place that he holds a mortgage thereon, with a description of the estate, the collector, before proceeding to sell it for non-payment of taxes, shall demand payment of said taxes of the mortgagee, as provided in section twenty-four.

28. If a mortgagee or non-resident owner of real estate, previously to the assessment of a tax, gives a written authority to some inhabitant of the place, as his attorney, to pay the taxes imposed on such estate, and the authority is filed with, or recorded by, the clerk of the place, the demand of payment shall be made upon such attorney before the estate is sold; otherwise, no demand need be made of payment of taxes assessed on the real estate of non-resident owners.

29. When a demand is made upon the attorney under the preceding section, the collector shall not advertise the sale of the lands until two months from the time of such demand.

30. The affidavit of a disinterested person, or the collector, who makes a sale of land for the payment of taxes, taken before a justice of the peace and recorded by the clerk of the place where the land lies, before a sale is made, and stating the demand

¹ As to the kind of reassessment which must be made to be effective for this purpose, see 99 Mass. 29, 32.

of payment of the tax, the person of whom, and the time and manner in which, it was made, shall be competent evidence of the demand. G. S. c. 12, § 27.

31. The collector shall give notice of the time and place of sale of real estate taken for taxes, by an advertisement thereof three weeks successively in some newspaper of the county where the real estate lies, if there is such newspaper, and if not, then in a newspaper printed in an adjacent county; the last publication to be at least one week before the time of sale. Sales of real estate, how advertised. Ibid. § 23. 1862, c. 183, § 7. See § 38. 13 Gray, 77.

32. The advertisement shall contain a substantially accurate description¹ of the several rights, lots, or divisions of the estate, to be sold, the amount of the tax assessed on each,² the names of all owners known³ to the collector, and the taxes assessed on their respective lands. Contents of advertisement. G. S. c. 12, § 29. 4 Cush. 265. 7 Cush. 503.

33. The collector shall, three weeks before the sale, post a notice, similar to that required by the two preceding sections, in some convenient and public place in his precinct, and a like notice on the premises by him advertised to be sold, if any part thereof is bounded by a street, lane, court, or highway. Notice, how posted. Ibid. § 30.

34. When real estate to be sold under the provisions of this chapter is situated in a place, the name of which has been changed by law within three years next preceding the sale, the collector shall, in his advertisement and notices of the sale, designate such place by its former and present name. When name of place has been changed. Ibid. § 31.

35. The affidavit of a disinterested person, taken before a justice of the peace, of the posting and publishing notifications of the sale of real estate by a collector or other officer for payment of taxes, made upon one of the original advertisements, or a copy thereof, and filed and recorded in the registry of deeds of the county or district where the land lies, within six months after the sale, shall be competent evidence of such notice. Affidavit of posting and publishing to be evidence, if recorded. Ibid. § 32.

¹ On this point see 4 Cush. 260, 265.

² If the amount of the tax is not accurately stated, the sale will be void. 7 Cush. 503.

³ Under the Gen. Sts. c. 11, § 8, the sale and conveyance of land by a collector of taxes for non-payment of taxes assessed thereon to a former owner, who, at the time of the assessment, had no title to, or possession of the land, is invalid, and passes no title to the purchaser. 117 Mass. 233.

Sale by auction
of sufficient,
etc.

G. S. c. 12, § 33.
13 Gray, 77.
3 Allen, 535.
See 1862, c. 183,
See § 59.

Collector may
adjourn sale,
etc.

Ibid. § 34.
See § 59.
1862, c. 183.
Deed to be
given to pur-
chaser, subject,
etc.
G. S. c. 12, § 35.
1862, c. 183, § 2.
See § 60, et seq.
10 Pick. 359.
2 Gray, 185.
6 Gray, 551.
7 Gray, 125.
6 Allen, 576.
10 Allen, 49.
When deed to
be recorded.

Owner may re-
deem within two
years, etc.
Ibid. § 36.
1862, c. 183.
See §§ 43, 65.
11 Cush. 289.
2 Gray, 185.
11 Gray, 410.
98 Mass. 44.
101 Mass. 444.

36. If the taxes are not paid, the collector, at the time and place appointed for the sale, shall sell by public auction so much of the real estate, or the rents and profits of the whole estate for such term of time, as shall be sufficient to discharge the taxes and necessary intervening charges; or he may at his option sell the whole or any part of the land; and after satisfying the taxes and charges, he shall, upon demand, pay the residue of the proceeds of the sale, if any, to the owner of the estate.

37. The collector may adjourn his sale, from day to day, not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof, at the time and place previously appointed for the sale.

38. The collector shall execute and deliver to the purchaser a deed of the real estate, or rents and profits sold; which deed shall state the cause of sale, the price for which the estate or rents and profits were sold, the name of the person on whom the demand for the tax was made, the places in the city or town where the notices were posted, the newspaper in which the advertisement of such sale was published, and the place of residence of the grantee; and, if the real estate has been sold, shall convey, subject to the right of redemption provided for in the following section, all the right and interest which the owner had therein at the time when the same was taken for his taxes. Such deed to be valid shall be recorded within thirty days from the day of sale.¹

39. The owner² of real estate sold for payment of taxes, or his heirs or assigns, may, within two years from the day of sale, redeem the estate sold, by paying or tendering to the purchaser, or his heirs or assigns, the sum paid by him, with ten per cent. interest, and all necessary intervening charges; and when the rents and profits are sold for payment of taxes, the same may be redeemed at any time within two years in the manner provided for

¹ The deed of a collector should be construed with some strictness with regard to the description of the premises sold, and if it fails in that particular will be void. 6 Gray, 551. If the cause of sale be not stated in full the deed will be void. 6 Allen, 576. *It seems* that a collector's deed will not convey a good title unless the land has been taxed to the true owner, or to the occupant, or to "owners unknown." 7 Gray, 125; 99 Mass. 29.

² This includes one who is in possession under a bond for a deed. 11 Gray, 410.

the redemption of rents and profits taken on execution. And in the following cases real estate so sold may be redeemed, by any person having such title thereto that he might have recovered the same if no such sale had been made, at any time within two years after he has actual notice of the sale:—

First. When no person is named in the tax list as the owner or occupant of the premises, they being taxed as belonging to persons unknown;

Second. When the person who is named in said list is merely a tenant or occupant of the premises, and not the rightful owner thereof;

Third. When there is any error in the name of the person intended to be taxed;

Fourth. Mortgagees of record.

40. If, upon reasonable search, the purchaser of real estate sold for non-payment of taxes, cannot be found in the place of which he is described in the collector's deed as resident, the owner of the estate may redeem it as provided in the preceding section, on paying to the treasurer of the place in which it is situated the amount which he would be required to pay to the purchaser; and the affidavit of any disinterested person of the making such search, taken before a justice of the peace and filed in the registry of deeds for the district or county in which the land is situated, within ninety days from the completion of the search, shall be competent evidence of the facts therein stated.

G. S. c. 12, § 36.
How redeemed when purchaser cannot be found, etc.
Ibid. § 37.

41. Such treasurer shall receive the money and give to the person paying it a certificate of such payment, specifying the estate on which the tax was originally assessed. The certificate may be recorded in the registry of deeds, with a note of reference from such record to the collector's deed; and, when so recorded, shall have the effect to release and discharge all right and title acquired under the collector's deed. The treasurer shall hold all money received by him under the preceding section, for the use and benefit of the persons entitled thereto; and shall pay it over on reasonable demand.

Duty of treasurer.
Ibid. § 38.

42. After proceedings have been commenced for the sale of real estate for a tax assessed thereon, and before the sale is made, the holder of any mortgage thereon may pay such tax, with all

Mortgagee may pay taxes on real estate in certain cases.

G. S. c. 12, § 39. intervening charges and expenses; and when the owner of real estate for three months after demand has neglected to pay such a tax, and the collector has made demand therefor upon a holder of a mortgage thereon, such holder may, in like manner, pay such tax, charges, and expenses.

He shall pay such taxes upon taking possession. Entitled to deed on tender. Ibid. § 40. See § 39. 5 Allen, 65.

43. The holder of a mortgage, upon taking possession of real estate thereunder, shall be liable to pay all taxes due thereon, and the expenses of any sale for taxes that has been commenced or taken place; to be recovered of him in an action of contract by the collector, or, when a sale has taken place, by the purchaser; and upon tender by the mortgagee to the purchaser, within the time provided for owners of real estate to make tender in section thirty-six, of the sum paid by him, with ten per cent. interest, and all necessary intervening charges, such purchaser shall, at the expense of the mortgagee, execute and deliver to him a valid deed of assignment of all interest acquired by virtue of the tax sale.

Mortgagee entitled to receipt for such taxes paid to collector. May tack same to mortgage. Ibid. § 41.

44. For all sums paid to a collector by the holder of a mortgage, under either of the two preceding sections, the collector shall, upon demand, give him a receipt therefor, duly acknowledged; and such sums shall be added to, and constitute part of, the principal sum of the mortgage; and the mortgage shall not be redeemed, without the consent in writing of the holder, until such sums and interest thereon are paid; and such receipt, recorded in the registry of deeds for the district or county where the land lies, within thirty days from its date, shall be notice to all persons of the payment of such sums, and the lien upon the estate therefor.

Supreme judicial court to have equity powers. Ibid. § 42. 10 Met. 101. 11 Gray, 410. 98 Mass. 44. 99 Mass. 208.

45. In all cases of sale of real estate for the payment of taxes assessed thereon, the supreme judicial court shall have equity powers, if relief is sought within five years from the sale.

When tax list, etc., is committed to sheriff, etc. Ibid. § 43.

46. When the tax list and warrant of the assessors is committed to the sheriff, or his deputy, he shall forthwith post, in some public place in the city or town assessed, an attested copy of said list and warrant; and shall make no distress for a tax till after thirty days from the time of such posting.

Sheriff's fees for collecting. Ibid. § 44.

47. If a person pays his tax on such list within said thirty days, the officer shall receive for his fees five per cent. on the sum assessed; but if a tax remains unpaid after the said thirty days, the officer shall proceed to collect the same by distress or imprison-

ment, in the manner collectors are required to proceed in like cases. The officer may also levy his fees for service and travel, in the collection of each person's tax, as in other cases of distress and commitment. G. S. c. 12, § 44.

48. Every collector shall, once in two months, if required, exhibit to the mayor and aldermen or selectmen, and where there are no such officers, to the assessors, a true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts for all money paid into the treasury by him. Collectors to exhibit accounts every two months if required. Ibid. § 46.

49. If a collector neglects so to exhibit his accounts, he shall forfeit the sum of two and a half per cent. on the sums committed to him for collection. Penalty. Ibid. § 47.

50. The collector shall be credited with all sums abated according to law, and with the amount of taxes assessed upon any person committed to prison within one year from the receipt of the tax list by the collector, and before paying his tax, and also with any sums which the city or town may see fit to abate to him, due from persons committed after the expiration of a year. Collectors to be credited with abatements, etc. Ibid. § 48. 9 Met. 503. 13 Gray, 324. 13 Allen, 273.

51. If the collector fails to collect a tax, without his own default, and there is a deficiency of the amount due on a state or county tax, such deficiency shall be supplied by him from the proceeds of the collection of city or town taxes, if any in his hands; and, if he have none, by the city or town treasurer, on the written requisition of the collector. Deficiency in state or county tax, how supplied. Ibid. § 49.

52. If a collector of taxes neglects to pay, within the time required by law, such sums of money as ought by him to be paid to the state or county treasurer, the city or town by which such collector was appointed shall be liable for such sums, to be recovered in an action of contract by such state or county treasurer respectively. Same, when collectors neglect to pay. Ibid. § 50.

53. If a collector neglects seasonably to pay a state or county tax committed to him, whereby the city or town is compelled to pay the same, or neglects seasonably to account for and pay in a city or town tax committed to him, the city or town may recover the amount thereof, with all damages sustained through such neglect, and interest, by an action of contract, declaring, on his official bond, if any has been given. Remedy for collector's neglect. Ibid. § 51. 13 Allen, 273.

54. If a collector becomes insane, or, in the judgment of the If collector be-

comes insane,
etc., selectmen
may remove
him.
G. S. c. 12, § 52.
7 Gray, 130.

selectmen, otherwise unable to discharge his duty, or absconds, removes, or, in the judgment of the selectmen, is about to remove, from the place, or refuses, on demand, to exhibit to the mayor and aldermen, or selectmen, or assessors, his accounts of collections, as herein provided, the selectmen may remove him from office, and appoint another collector, as in case of the death of the collector.

Tax list of de-
ceased collector,
how completed.
Ibid. § 53.
1 Met. 524.
4 Gray, 253.
Temporary col-
lector.

55. If a collector dies before completing the collection of a tax committed to him, the selectmen may appoint some suitable person to complete the collection, who shall receive a reasonable compensation, to be paid by the town, and they may commit the same tax list to him, with their warrant, accordingly; and when a temporary collector is appointed by the selectmen, the assessors shall commit the tax list to him with their warrant, and he shall have the same powers, and be subject to the same duties and liabilities, as other collectors.

If collector
dies, etc., list to
be delivered to
selectmen.
G. S. c. 12, § 54.
1 Met. 525.
Compensation
of collectors.
Ibid. § 55.

56. In case of the death or removal from office of a collector, his executors or administrators, and all other persons into whose hands any of his unsettled tax lists may come, shall forthwith deliver the same to the selectmen.

57. Collectors shall be paid such compensation for their services as their cities or towns shall determine.

RECOVERY OF TAXES COLLECTED.

Taxes paid to
collector, when
recovered back.
Ibid. § 56.
See *ante*, p. 828.
9 Gray, 38.
13 Gray, 476.
1 Allen, 319.
10 Allen, 48.
99 Mass. 208.
102 Mass. 348.

58. No tax paid to a collector shall be recovered back, unless it appears that it was paid after an arrest of the person paying it, a levy upon his goods, a notice of sale of his real estate, or a protest by him in writing; and the damages awarded in a suit or process based upon any error or illegality in the assessment or apportionment of a tax, shall not be greater than the excess of the tax above the amount for which the plaintiff was liable to be taxed. And no sale, contract, or levy, shall be avoided by reason of any such error or irregularity.

TAX SALES.

At sale of real
estate for taxes
collector may
purchase for
town, if no other
sufficient bid is
made.

59. If at the time and place appointed for the sale of real estate taken for taxes, as provided in the thirty-sixth section, no person shall appear and bid for the estate thus offered for sale, or the rents and profits thereof, or for the whole or any part of the

land, an amount equal to the tax and charges, and the sale shall have been adjourned from day to day, as provided in the thirty-seventh section, a public declaration of the fact shall then and there be made by the collector; immediately after which, provided no bid shall be made equal to the tax and charges, the collector shall give public notice that he shall, and that he then and there does, purchase, on behalf of the town or city by which the tax is assessed, the said estate, in one of the forms set forth in the thirty-sixth section: *provided, however*, that no sum exceeding the amount of the tax and the incidental costs and expenses of levy and sale shall be offered by him therefor.

1862, c. 183, § 1.
See § 36.

6 Allen, 576.

60. The deed to be given by the collector in such case shall, in addition to the statements by law required, set forth the fact of the non-appearance of a purchaser at the sale advertised by him, and shall confer upon such town or city the same rights as belong to an individual to whom such a deed may be given. And the several towns and cities of this commonwealth, in their corporate capacity, are hereby authorized as holders of said deeds, to exercise the same rights and perform the same duties as any individual purchaser of real estate taken for taxes.

Deed in such case and rights of town thereunder.
1862, c. 183, § 2.
See § 38.

61. If, within ten days after the sale of real estate for the payment of taxes, any purchaser thereof shall fail to pay to the collector the sum offered by him, and receive his deed, the sale shall be null and void, and the town or city shall be deemed to be the purchaser of the estate according to the provisions of this act [1862, c. 183, being §§ 59, 69 of the text]. And the deed to be given by the collector in such case shall, in addition to the statements now required by law, set forth the fact of the preceding sale, and the failure of the purchaser to pay the sum offered as aforesaid.

When purchaser at sale fails to pay in ten days, conveyance to be made to town.
Ibid. § 3.
See § 38.

62. The deed given to a town or city under the provisions of this act,¹ shall be placed in the custody of the treasurer thereof, to whom all applications for the redemption of the estate sold, under the provisions of law, shall be made. And the several towns and cities of the commonwealth may make such regulations for the custody, management, and sale of such estates, and the assignment of the tax titles thus obtained, not inconsistent with the laws of the commonwealth, as they may deem expedient. But nothing

Deeds to town to be held by treasurer.
Ibid. § 4.
See § 39.
Towns may make regulations for sale, etc., of estates conveyed to them.
1862, c. 183, § 4.

¹ Acts of 1862, c. 183, being §§ 59, 69 of the text.

1862, c. 183, § 47. herein contained shall take from the owner of said real estate, or
 G. S. c. 13, §§ 36, his heirs or assigns, the right to redeem the same, as provided in
 42. section thirty-nine.

Collector to be 63. The amount of the tax and all incidental costs and
 allowed amount expenses of levy and sale provided for by law, which shall be
 of tax and cost included in any sale in accordance with the provisions of the four
 in settlement preceding sections, shall be allowed the collector in his settlement
 with town. with such town or city.
 1-62, c. 183, § 5.

Collector's deed 64. In the deed which the collector shall execute and deliver,
 to include as provided in section thirty-eight, there shall also be inserted a
 special war- special warranty that the sale has in all particulars been con-
 ranty, and town ducted according to the provisions of law; and if it should
 to refund amount paid, subsequently appear that, by reason of any error, omission, or
 etc., in case of informality in any of the proceedings of assessment or sale, the
 error, etc. purchaser has no claim upon the property sold, there shall be paid
 Ibid. § 6. to said purchaser, upon his surrender and discharge of the deed
 10 Allen, 49. so given, by the town or city whose collector executed said deed,
 7 Gray, 125. the amount paid by him, together with ten per cent. interest per
 6 Gray, 551. annum on the same, which shall be in full satisfaction of all claims
 6 Allen, 576. for damages for any defect in the proceedings.
 99 Mass, 29.
 10 Allen, 49.
 See note to § 38.

If estate con- 65. If the owner does not redeem the property so purchased
 veyed is not re- by the city or town within the time prescribed by the thirty-ninth
 deemed in two section, said town or city may at any time proceed to sell the said
 years, town may real estate at public auction, after having given the same notice,
 sell again on as is required in section thirty-one, executing and delivering to
 giving notice, the highest bidder therefor, a quitclaim deed; and from the money
 etc. arising from said sale shall be deducted the expenses of making
 Ibid § 7. the sale, together with the amount paid at the first sale for tax
 See ante, § 39. and charges, with ten per cent. interest per annum thereon, and
 all intervening taxes and necessary charges; and the balance, if
 any, shall be deposited in the city or town treasury, to be paid
 to the party legally entitled to the estate if the same had not been
 sold for taxes, if the same shall be called for within five years; and
 if not demanded within that time the same shall enure to the
 benefit of said city or town.

Application of
 proceeds.

Taxes to be as-
 sessed on estate
 conveyed to

66. If any estate shall be purchased by any city or town,
 according to the provisions of this act,¹ taxes shall be assessed

¹ St. 1862, c. 183, §§ 59-69 of the text.

upon the same in the same manner as though the same were not so purchased; and said taxes shall be deducted from the proceeds of the final sale, as provided in the previous section.

67. When a person committed to prison for non-payment of taxes desires to take the oath for the relief of poor debtors, as provided in section fifteen, chapter twelve of the General Statutes, he may represent the same to the jailer, and the jailer shall make the same known to some magistrate named in section one, chapter one hundred and twenty-four of the General Statutes, and the magistrate shall thereupon appoint a time and place for the examination of the debtor, and shall direct the jailer to cause the debtor to be present at the same, and shall further proceed as directed in section fifteen [§ 18 of this digest].

68. The following charges and fees, and no other, shall be allowed to the collector, and shall be added to the amount of the tax, as provided in section thirty-six.

For making a written demand, twenty cents.

For preparing advertisement, fifty cents.

For advertisement in newspaper, the actual cost of the same.

For posting up notices in one or more public places, twenty cents for each notice.

For posting up notices on each piece of real estate, twenty cents.

For copy of notice, and the publication thereof, and obtaining affidavit of disinterested person, fifty cents.

For recording affidavit at registry of deeds, the fees of the register.

For preparing deed, two dollars.

For poundage, four per cent. on the first one hundred dollars; two per cent. on the second hundred dollars, and one per cent. on the balance of the tax.

And in the event that any delinquent tax-payer offers to pay the tax before the day of sale, such charges shall be added to the tax as have intervened at the time of said offer to pay.¹

69. Section ninety-six of chapter one hundred and eighteen of the General Statutes is amended, so that county, city, and town taxes shall be entitled to the same priority or preference as state taxes are now entitled to, in cases of insolvent debtors.

towns, and deducted out of proceeds of final sale.
1862, c. 183, § 8.

Persons committed for non-payment of taxes, how may take poor debtor's oath.
Ibid. § 9.
See § 18 *ante*.
G. S. c. 124, § 1.

Collector's fees.
1862, c. 183, § 10.
See § 36.
7 Gray, 128.
13 Gray, 77.

In distribution of insolvent estates, county, city, and town taxes entitled to same priority as State taxes.
Ibid. § 11.
G. S. c. 118, § 96.

CITY COLLECTOR.

Office of collector established. 1875, c. 176.
Powers of collector of taxes. 1802, c. 7, § 3.
1821, c. 110, §§ 1, 13.

Deputies who shall give bonds. See *ante*, p. 14, § 37.
See *ante*, p. 13, § 33.

Treasurer, etc., may collect taxes outstanding when he is chosen. 1803, c. 15, § 1.
1821, c. 110, §§ 1, 13.

Treasurer may issue his warrant for part of the rates, to his deputies. 1803, c. 15, § 2.
1821, c. 110, § 1.

Power of dis-training for taxes, how to be exercised.

70. By an act passed May 3, 1875, and accepted by the city council, May 17, 1875, the office of city collector was established; and it was provided that the said collector should have the powers then possessed by the treasurer of Boston. The special acts defining those powers are contained in the following sections.

71. By virtue of the act of eighteen hundred and two, chapter seven, section three, as modified by the first and thirteenth sections of the act of eighteen hundred and twenty-one, chapter one hundred and ten, the treasurer of Boston was made the collector of taxes in the said city, and was empowered to substitute and appoint under him such and so many deputies or assistants as the service may be found to require, who shall give bonds for the faithful discharge of their duty, in such sums, and with such sureties, as the mayor and aldermen shall think proper; and the said collector, and his deputy or deputies, shall have the same powers as are invested by law in collectors of taxes chosen by other towns in this commonwealth.

72. By virtue of the act of eighteen hundred and three, chapter fifteen, as modified by the city charter, the treasurer, his deputy or deputies, was empowered to collect all such taxes as may be outstanding and uncollected at the time of his being chosen to the office of treasurer; such treasurer and his deputies first giving bonds for the faithful discharge of their duty, in such sums and with such sureties as the mayor and aldermen shall think proper.

73. The said treasurer may issue his warrant to his deputy or deputies, for the collecting and gathering in such part of the rates or assessments as, in his discretion, he shall think proper to commit to such deputy or deputies; which warrant shall be of the same tenor with the warrant prescribed to be issued by the selectmen or assessors, for the collecting and gathering in of the state rates or assessments, *mutatis mutandis*.

74. By virtue of the act of eighteen hundred and seven, chapter one hundred and thirty-four, as modified by the city charter, the treasurer and collector was authorized to issue his warrant to the

¹ For provisions in relation to national bank stock, see St. 1873, c. 315, § 3; being § 86, under "Taxes (assessment)," p. 830.

sheriff of the county of Suffolk, his deputy, or to any constable of the city of Boston, directing them to distrain the persons or property of any person or persons who may be delinquent in the payment of taxes, after the time has expired, that is or may be fixed for payment by any vote of said town; which warrants shall be of the same tenor with the warrant prescribed to be issued by selectmen or assessors for the collecting or gathering in of the state rates or assessments, *mutatis mutandis*. And the said officers shall make a return of their warrants, with their doings thereon, to the said treasurer and collector, within thirty days from the date thereof: *provided, however*, that nothing in the said act shall prevent the said treasurer and collector, whenever there may be a probability of losing a tax, from distraining the person or property of any individual, before the expiration of the time fixed by the votes of said town.

75. By the same act it was made the duty of the said officers to execute all warrants they may receive from said treasurer and collector, to pursue the same process in distraining the persons or property of delinquents, as collectors of taxes were then authorized by law to do and perform; and for collecting the sum of money due on said warrant, to receive the fees that were then allowed by law for levying executions in personal actions: *provided, however*, before the said officers shall serve any warrant, they shall deliver to the delinquent, or leave at his or her usual place of abode, a summons from said treasurer and collector, stating the amount due; and that unless the same is paid within ten days from the time of leaving said summons, into the city treasury, with twenty cents for said summons, his or her property will be distrained according to law.

Same subject.
1807, c. 134, § 2.

ORDINANCE.¹

SECTION 1. In the month of January, or as soon as may be thereafter, annually, there shall be appointed a joint committee of the city council, called

Assessors, how many, and how nominated.
Jan. 3, 1868.
Feb. 24, 1869.

¹ An ordinance concerning the assessment and collection of taxes, passed January 3, 1868; amended February 24, 1869, October 1, 1869, March 8, 1870, March 1, 1872, March 7, 1876.

Oct. 1, 1869.
March 1, 1872.

the committee on the assessors' department, consisting of three members of the board of aldermen, and five members of the common council. The said committee shall have the care and supervision of the assessors' office and shall fix the amount of compensation to be paid to the clerks appointed by the assessors. In the month of January, or as soon as may be thereafter, annually, the said committee shall recommend to the city council the names of five persons to be voted for as assessors of taxes in the city of Boston; and also the names of the persons to be voted for as first assistant assessors of taxes, and the names of the persons to be voted for as second assistant assessors of taxes. Nothing herein contained, however, shall be construed to prevent the election by the city council, to either or all the above offices, of persons not recommended by said committee.

Choice of assessors.
Jan. 3, 1868.

SECT. 2. On the first Monday of February, or within sixty days thereafter, annually, there shall be elected, by concurrent vote of both branches of the city council, five assessors of taxes in the city of Boston, who shall be resident citizens thereof. They shall devote their whole time to the service of the city, and shall receive such compensation as the city council may from time to time determine.

First assistants chosen.
Jan. 3, 1868.
Feb. 24, 1869.
Oct. 1, 1869.
March 1, 1872.

SECT. 3. On the first Monday of February, or within sixty days thereafter, annually, there shall be elected, by concurrent vote of both branches of the city council, one assistant assessor of taxes, to be

denominated *first assistant*, for each assessment district. They shall be resident citizens of Boston, and shall receive such compensation as the city council may from time to time determine.

Jan. 3, 1868.
Feb. 24, 1870.
Oct. 1, 1869.
March 8, 1870.

SECT. 4. On the first Monday of February, or within sixty days thereafter, annually, there shall be elected, by concurrent vote of both branches of the city council, one assistant assessor of taxes, to be denominated *second assistant*, for each assessment district; and the board of assessors shall annually, in the month of January, with the approval of the joint standing committee on the assessors' department, file with the city clerk the number of assessment districts within the city, with their location and boundaries; and each assessment district shall be wholly within one ward. Each second assistant assessor shall be a resident of the ward within which is located the assessment district for which he is elected. For their services said assistants shall receive such compensation as the city council may from time to time determine.

Second assistants chosen.
Jan. 3, 1868.
Oct. 1, 1869.
March 8, 1870.

SECT. 5. The officers mentioned in the preceding sections shall hold their office for one year from the first day of April in the year in which they may be elected, and until others are chosen and qualified in their stead, unless sooner removed. They may be removed at the pleasure of the city council; and vacancies may be filled at any time for an unexpired term, in the manner hereinbefore provided for the election of said officers.

Tenure of office.
Jan. 3, 1868.

Organization of
assessors.
Jan. 3, 1868.

SECT. 6. The assessors shall meet as soon as practicable after their election, and organize themselves into a board (to be called the board of assessors), by the choice of a chairman and secretary from among their own number, which secretary shall also be the secretary of the board provided for in the next section.

Organization of
assistants.
Jan. 3, 1868.
Oct. 1, 1869.
March 8, 1870.
March 7, 1876.

SECT. 7. The assessors and the first assistant assessors shall meet as soon as practicable after their election, and organize themselves into a board, by the choice of a chairman from among their own number; and a majority of the board shall constitute a quorum for the transaction of business. It shall be the duty of the assessors to require that valuations and methods shall be in conformity to law, and uniform in their operation throughout the city.

Records to be
kept.
Jan. 3, 1868.

SECT. 8. It shall be the duty of the said secretary of the two boards, thus organized, to keep the records of the doings of both boards in the same book, in the order in which the meetings occur, always designating the board whose doings are recorded.

Secretary to cer-
tify days of ser-
vice.
Ibid.

SECT. 9. It shall be the duty of the secretary of the board of assessors to certify the number of days that the first assistant assessors and the second assistant assessors have severally devoted to the service of the city. And the said assistant assessors shall severally receive pay only for such number of days' service as may have been so certified by the said secretary.

SECT. 10. It shall be the duty of the first assistant assessors to assist the assessors in estimating the value of the personal property, and, in their respective districts, with one of the assessors or second assistant assessors, to appraise the value of the real estate, and to take a list of the polls therein, and report the same to the board of assessors. It shall be the duty of each of the second assistant assessors, in the district to which he shall be assigned, to visit, in company with one of the assessors or first assistant assessors, the different estates in such district, in order to aid such assessor or first assistant in the discharge of his duties.

SECT. 11. Abatements of taxes shall be made and recorded by the board of assessors, and the record thereof shall contain the names of all persons whose taxes have been abated in whole or in part, with the amount originally assessed, and the amount of abatements; and the reasons for abatement shall be stated, on the said record, against the name of each person whose tax may have been abated; and the board of assessors may require the attendance of any of the first or second assistant assessors at any hearing for the abatement of taxes; and when petitions for abatement are refused, and the petitioner appeals to the board of street commissioners, the record of said refusal by the board of assessors shall accompany the appeal. A record of all abatements made by the board of street commissioners shall be transmitted by their clerk to the board of assessors at the time they are

Estates and polls
to be assessed.

March 7, 1876.

Abatements of
taxes.

Jan. 3, 1868.

Jan. 3, 1868.

made, but the reasons for the abatement may be omitted.

Tax bills to be
made.
Ibid.

SECT. 12. It shall be the duty of the board of assessors to make out and deliver, to the collector, tax-bills for all taxes assessed on all persons and estates, on or before the first day of October in each year.¹

How collected.
Ibid

SECT. 13. The collector shall immediately issue the tax-bills, and, if the same are not paid within thirty days thereafter, he shall issue a summons to each delinquent person assessed; and if such person shall not pay his taxes within ten days after the receipt of such summons, or after the service thereof upon him in the usual form, the said treasurer shall issue his warrant for the collection of said taxes according to law.

Real estate to be
sold.
Ibid.

SECT. 14. As soon as it conveniently may be, after the collector has sold, or caused to be sold, for non-payment of any tax or assessment, any real estate in the city, he shall cause to be made under his supervision, and kept in his office for public reference, an alphabetical list, when practicable, of the location of such real estate, as well as of the name of the person, or persons, if known, against whom such tax or assessment was levied.

¹ See ordinance in relation to the city collector, under the title of "Finance," *ante*, p. 315.

TELEGRAPH POSTS AND LINES.

STATUTES.

1. The mayor and aldermen or selectmen of any place through which the lines of a telegraph company are to pass, shall give the company a writing, specifying where the posts may be located, the kind of posts, and the height at which and the places where the wires may run. After the erection of the line, having first given the company or its agent opportunity to be heard, they may direct any alteration in the location or erection of the posts, piers or abutments, and in the height of the wires. Such specifications and decisions shall be recorded in the records of the city or town.

Mayor and aldermen to specify locations, etc.
G. S. c. 64, § 3.
9 Gray, 387.
97 Mass. 555.

2. An owner of land near to or adjoining a highway or road along which lines are constructed by the company, who considers himself injured thereby, may, within three months after such construction, apply to the mayor and aldermen or selectmen to assess and appraise his damage. Before entering upon the service they shall severally be sworn faithfully and impartially to perform the duties required of them by this chapter [sixty-four of the General Statutes]. They shall on view make a first appraisal in writing of the loss or damage, if any, to the applicant, sign duplicates thereof, and on demand deliver one copy to the applicant, and the other to the company or its agents. If damages are assessed the company shall pay the same with the costs of the appraisers. If the appraisers award that the applicant has suffered no damage, he shall pay the costs of the appraisers. Any person aggrieved by the assessment of his damages may have the matter determined by a jury.

To assess damages of land owners, etc.
Ibid. § 4.

3. The mayor and aldermen and selectmen shall each receive, for services performed under this chapter, two dollars a day.

Appeal to a jury.
Ibid. § 6.

4. Whenever it shall be necessary to cut or otherwise disconnect the wires of any telegraph company, or to remove them from the poles or fixtures to which they are attached, in order to move a building across the same, or for any purpose, any person desiring so to cut, disconnect or remove such wires, shall have the right to do so, exercising reasonable care therein: *provided*, that before

Compensation of appraisers.
Ibid. § 5.
Telegraph wires may be cut, etc., to remove buildings, and for other purposes.
1869, c. 141, § 1.

1869, c. 141, § 1. doing so, he shall make a statement in writing, by him signed, of the time when, and the particular place where, by reference to the crossings of the streets or highways, he wishes to cut, disconnect or remove such wires as aforesaid, and leave the same at the office of such company, if any there is, in the town where such place is situated, twenty-four hours before the time so stated; and if such company has no office in the same town, then he shall send such statement by mail to the office of such company nearest to the place named therein, by putting it into the post-office, properly directed and prepaid, three days before the time stated therein. But the provisions of this section shall not apply to wires attached to poles which have not been erected in compliance with the provisions of section three, chapter sixty-four of the General Statutes [§ 1 of this digest].

City may construct lines of electric telegraph.
1869, c. 457, § 1.
9 Gray, 386.
13 Allen, 226.
97 Mass. 555.

May authorize other parties to construct private lines, etc.
Ibid. § 2.

Posts and structures to become town property, etc.

5. Cities and towns may construct for their own use, lines of electric telegraph upon and along the highways and public roads within their respective limits, subject to the provisions of chapter sixty-four of the General Statutes, as far as the same are applicable.

6. The board of aldermen of cities, and the selectmen of towns, may authorize any person, upon such terms and conditions as they may prescribe, and subject to the provisions of chapter sixty-four of the General Statutes, as far as applicable, to construct for private use a line of electric telegraph upon and along the highways and public roads of the city or town. After the erection of such line, the posts and structures thereof within the location of such highways and roads shall become the property of the city or town, and shall be subject to the regulation and control of the board of aldermen or selectmen, who may at any time require alterations in the location or erection of such posts and structures to be made by the parties using the same, and may order the removal thereof, having first given such parties notice, and an opportunity to be heard. The city or town may, at any time, attach wires for its own use to such posts and structures, and the board of aldermen or selectmen may permit other persons to attach wires for their private use thereto, or to posts and structures established by the city or town, and may prescribe such terms and conditions therefor, as they shall deem reasonable.

Penalty for in-

7. Whoever unlawfully and intentionally injures, molests or

destroys any wires, posts, structures or fixtures of any line of electric telegraph, established or constructed under authority of this act, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, or by both said penalties.

jury to structures, etc.
1869, c. 457, § 3.

TREES.

STATUTES.

1. No person who has by law a right to cut down or remove any ornamental or shade tree standing in any highway, town way or street, shall exercise such right without first giving notice of his intention to one of the selectmen of the town or mayor of the city in which the tree stands; and, if the selectmen of the town, or mayor and aldermen of the city, desire to retain the tree, they shall give notice thereof to such person within ten days after his notice to them; and in that case, the same course shall be taken and the same rules apply as to the assessment, appeal and final determination and payment of the damage such person may suffer by the retaining of said tree, as in the case of damage done by an alteration in such highway, town way or street.

No tree in street to be removed without permit.
1867, c. 242, § 1.
97 Mass. 472.

2. If any such person shall cut down, remove or injure such tree without first giving the notice required in the foregoing section, or in violation of any of the provisions thereof, or of the rights of the city or town acquired thereunder to maintain the same, he shall suffer the penalty provided for the injury or destroying of ornamental or shade trees in the seventh section of the forty-sixth chapter of the General Statutes, and the penalty in such case shall accrue to the town or city.¹

Penalty for violation of act.
1867, c. 242, § 2.

3. This act shall not be in force in any town or city until it shall be accepted by a majority of the legal voters in such town at a meeting legally called therefor, or by the city council.²

Act to be accepted.
Ibid. § 3.

¹ See, also, "Parks," *ante*, p. 585.

² Accepted by city council, Oct. 1, 1867.

Towns may grant money to encourage planting shade trees.
1869, c. 381.

4. Any town may at a legal meeting grant and vote a sum not exceeding twenty-five cents for each of its ratable polls in the year next preceding that in which such appropriation is made, to be expended under the direction of the selectmen in premiums, or in any such manner as they may deem most effectual to encourage the planting of shade trees by the owners of real estate, upon the public squares, or highways, adjoining such real estate.

WARDS AND WARD OFFICERS.

STATUTES.

DIVISION OF WARDS.

City to be divided into twenty-four wards.
1875, c. 243, § 1.
1876, c. 242.

1. It shall be the duty of the city council of the city of Boston, and it is hereby empowered during the year eighteen hundred and seventy-five, and each tenth year thereafter in which a census shall be taken by authority of the commonwealth, to cause a new division of the city to be made into twenty-four wards, in such manner as to include an equal number of voters in each ward, as nearly as conveniently may be, consistently with well-defined limits to each ward; and until such division is made the boundary lines of the wards shall remain as established. The city council may also, from time to time, prescribe a place in each ward at which elections shall be held.

Ward twenty-two in Boston to be divided into two wards.
1876, c. 242.

2. The city council of the city of Boston shall, immediately upon the passage of this act [1876, c. 242], proceed to divide the ward now numbered twenty-two in said city into two wards, to be known as ward twenty-two and ward twenty-five, and to prescribe a place in each ward in which elections shall be held.

Time when new division goes into effect.
1865, c. 7.

3. By an act passed in 1865, authorizing the several cities in the commonwealth to make a new division of their wards in 1865, and in every tenth year thereafter, it was provided that such new division should not go into effect before the tenth day of November in any year in which the new division shall be made.

Ward officers after new division, etc.

4. At the first election held after a new division of wards, in any city in this commonwealth, the respective ward officers chosen

under the preceding organization shall officiate in the same numerical ward for which they were chosen respectively, and shall continue to act there until others shall be chosen and qualified in their stead. G. S. c. 19, § 4.

5. All officers chosen at any meeting called by the mayor and aldermen of any city, after such new division into wards, shall hold their offices until the next annual meeting, and until others shall be chosen and qualified in their stead. To hold their office until the next annual meeting. Ibid. § 5.

APPOINTMENT AND ELECTION OF WARD OFFICERS.

6. The mayor of the city of Boston shall, prior to the first day of November in the year eighteen hundred and seventy-six, with the approval of the board of aldermen of said city, appoint for each ward of said city three inspectors of elections, who shall be qualified voters and inhabitants in such ward. One of said inspectors shall hold his office for one year, one for two years, and one for three years, from said first day of November; and in each year after the year eighteen hundred and seventy-six, the said mayor shall, before the first day of November, and with the approval of said board, appoint for each ward one inspector of elections, who shall be a qualified voter and inhabitant in such ward, and shall hold office for three years from the first day of November then next succeeding. Any such inspector may be at any time removed from office by said mayor, with the approval of said board, and any vacancy occurring in the office of said inspectors shall be filled, for the residue of the term of the inspector whose place is to be filled, by appointment and approval as above provided. Three inspectors of elections to be appointed for each ward. 1876, c. 248, § 1.
May be removed at any time.

7. Said inspectors of elections, before entering upon the duties of their office, shall take and subscribe an oath faithfully and impartially to discharge such duties; which oath may be administered by the city clerk, or by his assistant, or by any justice of the peace, and a record made thereof in the office of said city clerk. To be sworn. Ibid. § 2.

8. The qualified voters of each ward in said city, at the municipal election to be held in December next, and at each annual municipal election thereafter, shall choose by ballot one warden, one clerk, and Warden, clerk, etc., to be elected. Ibid. § 3.

1876, c. 246, § 3. three inspectors of elections, each of whom shall be a qualified voter and inhabitant in such ward, and shall hold his office for one year, and until another shall be chosen and qualified in his stead, unless he shall sooner vacate his office in the manner hereinafter set forth.

To be sworn.
Ibid. § 4.

9. The said wardens, clerks, and inspectors, shall respectively make oath faithfully and impartially to discharge their several duties, which oath may be administered by the clerk to the warden, and by the latter to the clerk and inspectors, or to any or all of said officers by the city clerk, or by his assistant, or by any justice of the peace; and a certificate thereof shall be entered in the record to be kept by the ward clerk.

In case of non-election, new election to be held.
Ibid. § 5.

10. In case of the non-election of any of said officers at the annual municipal election, the board of aldermen of said city may issue their warrant in due form for an election to be held at such time and place as said board may deem advisable.

In case of absence, officer *pro tem.* may be elected by hand vote.
Ibid. § 6.

11. In case of the absence of any ward officer at any ward meeting, such officer may be chosen *pro tempore* by hand vote, and shall have all the powers and be subject to all the duties of the regular officer at such meeting. The person so elected, before entering upon the duties of his office, shall take the oath as hereinbefore provided.

POWERS OF WARDEN.

Warden to preside and have powers of moderators.
Ibid. § 7.

12. The warden shall preside at all meetings of his ward, and shall have the powers of moderators of town meetings. In case of his absence, the clerk, and in case of the absence of both warden and clerk, one of the elected inspectors, according to seniority in age, shall preside until a new warden has been chosen.

DUTIES OF CLERK.

Clerk to keep records, etc.
Ibid. § 8.

13. It shall be the duty of the clerk to make and keep a fair and true record of all meetings, and at the expiration of his term of office to deliver such record, together with all other documents and papers held by him in his said capacity, to the city clerk, by whom such of them as need be shall be transmitted to the next ward clerk.

DUTIES OF WARD OFFICERS GENERALLY.

14. It shall be the duty of the warden and inspectors to receive, sort and count, and of the warden to declare, all votes at any election within such ward; and the clerk may assist in assorting and counting the votes.

Warden and inspectors to receive, sort and count votes.
1876, c. 246, § 9.

15. It shall be the duty of all ward officers named in this act to attend and perform their respective duties at the times and places appointed for elections of any officers, whether of the United States, state, city or wards, or for the determination of any question submitted to the qualified voters by lawful authority; and to make and sign the returns of the same.

Ward officers to make and sign returns.
Ibid. § 10.

16. The wardens, clerks and inspectors of elections shall receive such compensation for each day's actual service as the city council of said city may from time to time determine, and shall be subject to the penalties to which such ward officers are subject under general laws.

Compensation.
Ibid. § 11.

BALLOT BOXES.

17. The registrars of voters of said city shall provide for each ward therein a sufficient number of suitable ballot-boxes. No ballots shall be received at any election until the full number of ward officers as hereinbefore prescribed has been completed, nor unless the warden, clerk, and at least two of the appointed inspectors and two of the elected inspectors are present, nor until each of said ward officers who is present has ascertained by personal examination that the ballot-boxes are empty. While an election is going on, each ballot-box shall be in the immediate charge of two inspectors, one from the appointed inspectors and one from the elected inspectors, during the whole time that ballots are received in that box.

Ballot-boxes to be provided by registrars of voters.
Ibid. § 12.

Each box to be in charge of two inspectors.

WARD MEETINGS.

18. Whoever, in an assembly of people, met for a lawful purpose, at which an alphabetical list of voters is used in voting, votes or attempts to vote under any name other than his own, shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the jail not exceeding thirty days, on complaint in any court of competent jurisdiction.

Penalty for voting under a false name.
1874, c. 344.

ORDINANCES.¹

DIVISION OF WARDS.

Ward bound-
aries.
Nov. 16, 1875.

SECTION 1. The present division of the wards of the city is hereby altered, and a new division thereof is hereby made, and the same shall hereafter be known and constituted as follows, viz.: —

Ward No. 1.
Ibid.
Dec. 4, 1875.

WARD No. 1. All that part of the city commonly called East Boston, including Breed's Island, which lies northerly or easterly of the following line: beginning at the water near Front street, thence through the middle of Porter street extended and Porter street to Central square; thence across Central square to Border street; thence through the middle of Border street to the line dividing Weeks' wharf from Jackson's ship-yard; thence along said dividing line to the water.

Ward No. 2.

WARD No. 2. All that part of the city commonly called East Boston, which lies southerly or westerly of the above-named line of Ward One together with all the islands in the harbor.

Ward No. 3.

WARD No. 3. Beginning at the corner of High and Pearl streets; thence by the middle of Pearl street to Medford street; thence by the middle of Medford street to the easterly line of Brooks's wharf; thence by said line to the boundary line in the Mystic river between Boston and Everett and Chelsea; thence along said line to the northeasterly line of the Navy Yard; thence along the said line to Adams street;

¹ An ordinance regulating the use of ward rooms for political meetings, passed Dec. 30, 1862. An ordinance providing for a new division of the city into wards, passed Nov. 16, 1875. An ordinance in relation to Breed's Island, so called, passed Dec. 4, 1875. An ordinance to divide ward numbered twenty-two into two wards, passed May 27, 1876.

thence along Adams street on the northwesterly line of the Navy Yard to Mount Vernon street; thence by the middle of Mount Vernon street to Mount Vernon avenue; thence by the middle of Mount Vernon avenue to Chestnut street; thence by the middle of Chestnut street to the east side of Monument square; thence by the middle of the east side of Monument square to High street; thence by the middle of High street to the point of beginning. Ward No. 3.

WARD No. 4. All that part of Boston formerly known as Charlestown and not comprised in wards five and three as herein described; being all that part of Boston as aforesaid lying westerly or northerly of the following line: Beginning at the water at a point opposite the end of Lincoln street; thence by the middle of Lincoln street to Main street; thence by the middle of Main street to Walker street; thence by the middle of Walker street to High street; thence by the middle of High street to Pearl street; thence by the middle of Pearl street to Medford street; thence by the middle of Medford street to the easterly line of Brooks's wharf; thence by said line to the water. Ward No. 4.

WARD No. 5. Beginning at the water on the Charlestown side on the southwesterly line of the navy yard, toward Caswell's wharf; thence by said line to Adams street; thence across Adams street to Mount Vernon street; thence by the middle of Mount Vernon street to Mount Vernon avenue; thence by the middle of Mount Vernon avenue to Chestnut street; thence by the middle of Chestnut street to the easterly part of Monument square; thence by the middle of the said easterly part of Monument square to High street; thence by the middle of High street Ward No. 5.

Ward No. 5.

to Walker street; thence through the middle of Walker street to Main street; thence through the middle of Main street to Lincoln street; thence through the middle of Lincoln street and the line thereof extended to the water; thence by the water to the point of beginning.

Ward No. 6.

WARD NO. 6. Beginning at the water at the draw on Charles-river bridge; thence along and including said bridge to Prince street; thence by the middle of Prince street to Salem street; thence by the middle of Salem street to Hanover street; thence by the middle of Hanover street to Blackstone street; thence by the middle of Blackstone street to North street; thence by the middle of North street to Dock square; thence across Dock square to Devonshire street; thence through the middle of Devonshire street to Milk street; thence through the middle of Milk street to India street; thence across India street to the line dividing the former Central wharf from the former India wharf; thence along said line of division to the water; thence by the water front to the point of beginning.

Ward No. 7.

WARD NO. 7. Beginning at the water at the southerly end of Charles-river bridge; thence by the middle of Prince street to Salem street; thence by the middle of Salem street to Hanover street; thence by the middle of Hanover street to Blackstone street; thence by the middle of Blackstone street to North street; thence by the middle of North street to Dock square; thence across Dock square to Devonshire street; thence by the middle of Devonshire street to State street, northerly fork; thence by the middle of

said northerly fork of State street to Court street; ^{Ward No. 7.} thence by the middle of Court street to Howard street; thence by the middle of Howard street to Bulfinch street; thence by the middle of Bulfinch street to Bowdoin square; thence by the middle of Bowdoin square to Cambridge street; thence by the middle of Cambridge street to Lynde street; thence by the middle of Lynde street to Leverett street; thence by the middle of Leverett street to Causeway street; thence by the middle of Causeway street to Beverly street; thence by the middle of Beverly street to Warren bridge; thence by and including the said Warren bridge to the water at the draw thereon; thence by the water to the point of beginning.

WARD NO. 8. Beginning at the water at the ^{Ward No. 8.} southerly end of Warren bridge; thence by the middle of Beverly street to Causeway street; thence by the middle of Causeway street to Leverett street; thence by the middle of Leverett street to Lynde street; thence by the middle of Lynde street to Cambridge street; thence by the middle of Cambridge street to Blossom street; thence by the middle of Blossom street to Allen street; thence by the middle of Allen street across North Charles street to the line between Taylor's wharf and the Hospital wharf; thence by the said line to the water; thence by the water to the point of beginning.

WARD NO. 9. Beginning at the water at the line ^{Ward No. 9.} between Taylor's wharf and the Hospital wharf; thence by said line across North Charles street to Allen street; thence by the middle of Allen street to Blossom street; thence by the middle of Blossom

Ward No. 9.

street to Cambridge street; thence by the middle of Cambridge street to Joy street; thence by the middle of Joy street to Beacon street; thence by the middle of Beacon street to Otter street; thence by the middle of Otter street to the water; thence by the water to the point of beginning.

Ward No. 10.

WARD No. 10. Beginning at the junction of Arlington and Beacon streets; thence by the middle of Beacon street to Joy street; thence by the middle of Joy street to Cambridge street; thence by the middle of Cambridge street to Bowdoin square; thence by the middle of Bowdoin square to Bulfinch street; thence by the middle of Bulfinch street to Howard street; thence by the middle of Howard street to Court street; thence by the middle of Court street to the northerly fork of State street; thence by the middle of said northerly fork of State street to Devonshire street; thence by the middle of Devonshire street to Lincoln street; thence by the middle of Lincoln street to Beach street; thence by the middle of Beach street to Hudson street; thence by the middle of Hudson street to Kneeland street; thence by the middle of Kneeland street to Eliot street; thence by the middle of Eliot street to Tremont street; thence by the middle of Tremont street to Boylston street; thence by the middle of Boylston street to Arlington street; thence by the middle of Arlington street to Beacon street, at the point of beginning.

Ward No. 11.

WARD No. 11. Beginning at the water at the end of Otter street; thence by the middle of Otter street to Beacon street; thence by the middle of Beacon street to Arlington street; thence by the middle of

Arlington street to Boylston street; thence by the middle of Boylston street to Carver street; thence by the middle of Carver street to Eliot street; thence by the middle of Eliot street to Warrenton street; thence by the middle of Warrenton street to Tremont street; thence by the middle of Tremont street to Chandler street; thence by the middle of Chandler street to Berkeley street; thence by the middle of Berkeley street to Lawrence street; thence by the middle of Lawrence street to Dartmouth street; thence by the middle of Dartmouth street to Warren avenue; thence by the middle of Warren avenue to the junction of Columbus avenue and West Newton street; thence by the middle of West Newton street to the Boston and Providence railroad; thence by the line of the southeasterly side of the Boston and Providence railroad to West Chester park; thence by the middle of West Chester park to the water; thence by the water to the point of beginning. Ward No. 11.

WARD No. 12. Beginning at the water at the dividing line between Central wharf and India wharf as formerly established; thence along said line to India street; thence by the middle of India street to Milk street; thence by the middle of Milk street to Devonshire street; thence by the middle of Devonshire street to Lincoln street; thence by the middle of Lincoln street to Beach street; thence by the middle of Beach street to Hudson street; thence by the middle of Hudson street to Kneeland street; thence by the middle of Kneeland street to Eliot street; thence by the middle of Eliot street to Tremont street; thence by the middle of Tremont street Ward No. 12.

Ward No. 12. to Boylston street; thence by the middle of Boylston street to Carver street; thence by the middle of Carver street to Eliot street; thence by the middle of Eliot street to Warrenton street; thence by the middle of Warrenton street to Tremont street; thence by the middle of Tremont street to Pleasant street; thence by the middle of Pleasant street to Washington street; thence by the middle of Washington street to Pine street; thence by the middle of Pine street to Harrison avenue; thence by the middle of Harrison avenue to Way street; thence by the middle of Way street to Albany street; thence across said Albany street to Broadway street and bridge; thence by the middle of Broadway street and bridge to the water at the middle of the draw; thence by the water to the point of beginning, including all bridges from the westerly side of the draws of each.

Ward No. 13. WARD NO. 13. Beginning at the water in the South bay, so called, at a point opposite to the crossing of the Old Colony railroad and Dorchester avenue; thence by the water front to the end of E street, including all bridges from the easterly side of the draws thereof; thence from the end of E street by the middle of said E street to West Sixth street; thence by the middle of West Sixth street to D street; thence by the middle of D street to the Old Colony railroad; thence by the line of the south-westerly side of the Old Colony railroad to the point of beginning.

Ward No. 14. WARD NO. 14. Beginning at the water at the end of E street; thence by the middle of E street to West Broadway; thence by the middle of West

Broadway to Dorchester street; thence by the middle of Dorchester street to Old Harbor street; thence by the middle of Old Harbor street to the water; thence by the water to the point of beginning. Ward No. 14.

WARD NO. 15. Beginning at the water at a point opposite the crossing of the Old Colony railroad and Dorchester avenue; thence by the water to the line of the westerly side of the New York and New England railroad, and by said line to a point opposite the line of Willow court; thence by said line and the middle of Willow court to Dorchester street; thence by the middle of Dorchester street to Mount Vernon street; thence by the middle of Mount Vernon street and the line of the same continued to the water; thence by the water to the end of Old Harbor street; thence by the middle of Old Harbor street to Dorchester street; thence by the middle of Dorchester street to West Broadway; thence by the middle of West Broadway to E street; thence by the middle of E street to West Sixth street; thence by the middle of West Sixth street to D street; thence by the middle of D street to the Old Colony railroad; thence by the southwesterly line of said railroad to the point of beginning; including in said ward the above-named parts of the Old Colony railroad and the New York and New England railroad. Ward No. 15.

WARD NO. 16. Beginning at the water at the southwesterly side of Broadway street and bridge; thence by the southwesterly side of said street and bridge to Albany street; thence across Albany street to Way street; thence by the middle of Way street to Harrison avenue; thence by the middle of Harri- Ward No. 16.

Ward No. 16.

son avenue to Pine street; thence by the middle of Pine street to Washington street; thence by the middle of Washington street to Pleasant street; thence by the middle of Pleasant street to Tremont street; thence by the middle of Tremont street to Chandler street; thence by the middle of Chandler street to Berkeley street; thence by the middle of Berkeley street to Tremont street; thence by the middle of Tremont street to Milford street; thence by the middle of Milford street to Shawmut avenue; thence across Shawmut avenue to Bradford street; thence by the middle of Bradford street to Medford court; thence by the middle of Medford court to Washington street; thence across Washington street to Ashland place; thence by the middle of Ashland place to Harrison avenue; thence by the middle of Harrison avenue to Bristol street; thence by the middle of Bristol street to Albany street; thence across Albany street to the water; thence by the water to the point of beginning.

Ward No. 17.

WARD NO. 17. Beginning at the water at a point opposite to the end of Bristol street; thence on a line to said street, and by the middle of Bristol street to Harrison avenue; thence by the middle of Harrison avenue to Ashland place; thence by the middle of Ashland place to Washington street; thence across Washington street to Medford court; thence by the middle of Medford court to Bradford street; thence by the middle of Bradford street to Shawmut avenue; thence across Shawmut avenue to Milford street; thence by the middle of Milford street to Tremont street; thence by the middle of Tremont

street to Berkeley street; thence by the middle of Ward No. 17. Berkeley street to Lawrence street; thence by the middle of Lawrence street to Dartmouth street; thence by the middle of Dartmouth street to Warren avenue; thence by the middle of Warren avenue to Brookline street; thence by the middle of Brookline and East Brookline streets to Albany street; thence across Albany street to the northeast line of the city property commonly called the paving depot; thence by said line across the water to the westerly line of the New York and New England railroad; thence by said line and the adjacent and continuous lines of wards thirteen and sixteen to the point of beginning.

WARD NO. 18. Beginning at the water at the Ward No. 18. northeast line of the before-named paving depot belonging to the city; thence along said line to Albany street; thence across Albany street to East Brookline street; thence by the middle of East Brookline and Brookline streets to Warren avenue; thence by the middle of Warren avenue to the junction of Columbus avenue and West Newton street; thence by the middle of West Newton street to the Boston and Providence railroad; thence by the line of the southeasterly side of the Boston and Providence railroad to Camden street; thence by the middle of Camden street to Washington street; thence by the middle of Washington street to Lenox street extended; thence by the middle of Lenox street, or the extension thereof, to Fellows street; thence by the middle of Fellows street to Northampton street; thence by the middle of Northampton

Ward No. 18. street to Albany street; thence by the middle of Albany street to the Roxbury canal; thence by the middle of the Roxbury canal to the line across South bay, forming part of the southwesterly boundary of ward seventeen; thence by said line to the point of beginning.

Ward No. 19. WARD NO. 19. Beginning at the crossing of Camden street and the Boston and Providence railroad; thence by the northwesterly line of said railroad to Tremont street; thence by the middle of Tremont street to Pynchon street; thence by the middle of Pynchon street to Roxbury street; thence by the middle of Roxbury street to Washington street; thence by the middle of Washington street to Camden street; thence by the middle of Camden street to the point of beginning.

Ward No. 20. WARD NO. 20. Beginning at a point on the before-described line of ward seventeen (across South bay from the paving depot to the New York and New England railroad), at its intersection with the line of Roxbury canal; thence by the middle of the Roxbury canal to Albany street; thence by the middle of Albany street to Northampton street; thence by the middle of Northampton street to Fellows street; thence by the middle of Fellows street to Lenox street, or the extension thereof; thence by the middle of Lenox street, or the extension thereof, to Washington street; thence by the middle of Washington street to Warren street; thence by the middle of Warren street to Dudley street; thence by the middle of Dudley street to Grenville street; thence by the middle of Grenville street to Winthrop street; thence

by the middle of Winthrop street to Blue Hill ^{Ward No. 20.} avenue; thence by the middle of Blue Hill avenue to Quincy street; thence by the middle of Quincy street to Columbia street; thence by the middle of Columbia, Boston, and Dorchester streets to Willow court; thence by the middle of Willow court and the line thereof extended, to the westerly side of the New York and New England railroad; thence by the water along the westerly side of said railroad to the line across South bay, before described as a boundary of ward seventeen; thence by said line to the point of beginning.

WARD No. 21. Beginning at a point on the north- ^{Ward No. 21.} west side of the Boston and Providence railroad, at the crossing of Tremont street; thence by the north-westerly line of said railroad to the crossing with Centre street at its junction with Amory street; thence by the middle of Amory street to Codman avenue; thence by the middle of Codman avenue to Washington street; thence by the middle of Washington street to Egleston square; thence by the middle of Egleston square to Seaver street; thence by the middle of Seaver street to Blue Hill avenue; thence by the middle of Blue Hill avenue to Winthrop street; thence by the middle of Winthrop street to Grenville street; thence by the middle of Grenville street to Dudley street; thence by the middle of Dudley street to Warren street; thence by the middle of Warren street to Washington street; thence by the middle of Washington street to Roxbury street; thence by the middle of Roxbury street to Pynchon street; thence by the middle of Pynchon

Ward No. 21. street to Tremont street; thence across Tremont street and the Boston and Providence railroad to the point of beginning.

Ward No. 22. May 27, 1876. WARD NO. 22. All that portion of the city bounded as follows: north by Charles river; west by the easterly line of St. Mary's street extended to Charles river; west and northwest by the town of Brookline; south by ward twenty-three; southeast by wards twenty-one and nineteen; and east by ward eleven.

Ward No. 23. WARD NO. 23. Beginning at the boundary line between Boston and Brookline at the crossing with Pond avenue; thence by the middle of Pond avenue to Perkins street; thence by the middle of Perkins and Centre streets to the junction with Amory street; thence by the middle of Amory street to Codman avenue; thence by the middle of Codman avenue to Washington street; thence by the middle of Washington street to Egleston square; thence by the middle of Egleston square and Seaver street to Blue Hill avenue; thence by the middle of Blue Hill avenue to Back street; thence by the middle of Back street to the boundary line between Boston and Hyde Park; thence by the boundary lines between that part of Boston formerly called West Roxbury and the adjacent towns to the point of beginning.

Ward No. 24. WARD NO. 24. Beginning at the boundary line between Boston and Hyde Park, at the crossing with Back street; thence by the middle of Back street to Blue Hill avenue; thence by the middle of Blue Hill avenue to Quincy street; thence by the middle of Quincy street to Columbia street; thence by the

middle of Columbia, Boston and Dorchester streets Ward No. 24.
to Mount Vernon street; thence by the middle of
Mount Vernon street and the line thereof extended
to the water; thence by the boundaries as heretofore
established of that part of Boston formerly called
Dorchester to the point of beginning.

WARD NO. 25. All that portion of the city Ward No. 25.
May 27, 1876.
bounded as follows: north by Charles river; west
by the city of Newton; southeast and south by the
town of Brookline; and east by the easterly line of
St. Mary's street extended to Charles river.

USE OF WARD-ROOMS.

SECT. 2. Whenever there may be made to the Use of ward-
rooms may be
granted by
board of alder-
men, etc., for
political meet-
ings.
Dec. 30, 1862.
board of aldermen or superintendent of public build-
ings, a written application by not less than five legal
voters of any ward for the use of the ward-room in
such ward, for the purpose of holding a meeting
therein, said board or said superintendent (either by
the special order of said board or under established
rules or regulations of said board¹) may grant for a
time and purpose specified in the permit, upon the
terms and subject to the provisions of this ordinance,
the use of said ward-room to said applicants, who
shall be for such time in possession thereof. But
such permit shall not extend to any adjournment or

¹ By an order of the city council, passed May 13, 1864, the superintendent of public buildings was directed thereafter to issue the necessary permits for the use of ward-rooms under this ordinance, and he was directed to pay into the city treasury, quarterly, all sums received by him for opening, heating, and lighting said rooms. "City Records," Vol. XLII., page 240.

Dec. 30, 1862.

adjournments of said meeting, unless so stated in such permit, and such permit may be revoked at any time by the board of aldermen, and every such application shall state the kind of meeting proposed by the applicants to be held in the ward-room, and also the call for such meeting, and all notifications of such meeting shall specify that the invitation or request to persons to be present thereat is subject to the provisions of this ordinance.

Persons not
legal voters,
etc., in ward,
shall not vote,
etc.
Ibid.

SECT. 3. If any person not a legal voter in such ward, and not included in the call for such meeting shall mark or vote at such meeting, or if any person, whether a legal voter in such ward or not, shall, against the expressed consent of such applicants, or of a major part of them present, mark or vote in choice of candidates, or otherwise vote or speak, or remain at said meeting or any adjournment thereof, he shall be punished by a fine not exceeding twenty dollars for each offence; and if the notifications of said meeting contained the specification aforesaid, making the invitation or request to persons to be present thereat subject to the provisions of this ordinance, it shall be the duty of any police officer, if so directed by said applicants, or by a major part of them present, or by the presiding officer of said meeting, to remove from the ward-room any person offending against the provisions of this section, who, after being requested by said applicants, or a major part of them present, or by the presiding officer of said meeting, to leave the room, neglects or refuses so to do.

SECT. 4. Whenever any such permit is granted, the superintendent of public buildings shall notify the chief of police thereof, who shall thereupon detail a sufficient police force to be present and keep the peace at such meeting, and any adjournment thereof, and obey the lawful orders of the applicants, or of the major part of them present, and also of the chairman or presiding officer of the meeting, and enter complaints for all violations of this ordinance.

Chief of police
to be notified of
meetings, etc.
Dec. 30, 1862.

SECT. 5. As soon as the list of voters in any ward is prepared for any national, congressional, state, county, or municipal election, a copy thereof shall be posted or hung up by the superintendent of public buildings inside of the ward-room in such ward, and a like copy in some conspicuous place on the outside of such ward-room, so as to be readily accessible to the public, and they shall remain there till after the next election, and until new and revised lists may be substituted therefor.

List of voters to
be placed in and
on the ward-
room.
Ibid.

SECT. 6. The applicants to whom any such permit is granted shall, before the issuing thereof, pay to the said superintendent such sum of money as he may think sufficient to defray the expense of opening and closing and lighting and heating the ward-room during the time specified in such permit, which sum shall be accounted for and paid by him as the city council shall direct.

Applicants to
pay expenses of
opening, light-
ing, etc.
Ibid.

SECT. 7. Any person other than the city clerk, or some person by him duly authorized, who shall carry

List of voters
posted not to be
taken away, etc.,
except, etc.

Dec. 30, 1862.

away, destroy, break, or mutilate any copy so posted or hung up, shall be punished by a fine not exceeding twenty dollars for each offence. The provisions of this section, however, shall not apply to the mere erasure from the lists in any ward of the name of any person who at the time of such erasure has actually ceased to be a legal voter in such ward.

Copy of ordinance to be placed in each ward-room.
Ibid.

SECT. 8. It shall be the duty of the said superintendent to cause to be suitably framed and hung up in some conspicuous place in each of the ward-rooms of the city, a printed copy of this ordinance. And it shall be specified in all permits, granted as aforesaid, that the same are granted upon the terms and subject to the provisions of this ordinance.

WATER DEPARTMENT.¹

STATUTES.

1. RELATING TO COCHITUATE LAKE AND SUDBURY-RIVER WATER SUPPLY. PP. 885-907.
2. RELATING TO MYSTIC-VALLEY WATER SUPPLY. PP. 907-927.
3. ESTABLISHING BOSTON WATER BOARD. P. 928.
4. AUTHORIZING BOSTON TO PROCURE WATER FROM OTHER SOURCES. PP. 928, 929.
5. AUTHORIZING THE PURCHASE OF WATER RIGHTS. PP. 929, 930.
6. AUTHORIZING THE REGULATION OF WATER FIXTURES, THE USE OF RESERVOIRS, ETC. P. 931.
7. IN RELATION TO LEASING PONDS FOR THE CULTIVATION OF FISHES. P. 932.

ORDINANCES.

1. ORGANIZING THE WATER DEPT. PP. 932-946.
2. IN RELATION TO CHESTNUT-HILL RESERVOIR. PP. 947, 948.

 1. AUTHORITY TO TAKE WATER FROM LAKE COCHITUATE.

1. The city of Boston is hereby authorized, by and through the agency of three commissioners, to be appointed in the manner hereinafter provided, to take, hold, and convey to, into, and through City may obtain water from Long pond, etc., in Natick, etc.

¹An act for supplying the city of Boston with pure water, was passed March 25, 1845 (Stat. 1845, c. 220), containing the provision that the act should be void unless accepted by a majority of the legal voters of the city, in their respective wards, within sixty days from its passage. The act was rejected, by a vote of 3,670 yeas, to 3,999 nays. The act of 1846, c. 167, given in the text, was passed March 30, 1846, and contained the following provisions, viz.: *Sect. 17.* The mayor and aldermen of the city of Boston shall notify and warn the legal voters of the said city to meet in their respective wards, on such day as the said mayor and aldermen shall direct, not exceeding thirty days from and after the passing of this act, for the purpose of giving their written votes upon the question whether they will accept the same; and if a majority of the votes so given upon the question aforesaid shall

1846, c. 167, § 1. the said city, the water of Long pond, so called, in the towns of Natick, Wayland, and Framingham, and the waters which may flow into and from the same, and any other ponds and streams within the distance of four miles from said Long pond, and any water rights connected therewith; and may also take and hold, by purchase or otherwise, any lands or real estate necessary for laying and maintaining aqueducts for conducting, discharging, disposing of, and distributing water, and for forming reservoirs; and may also take and hold any land on and around the margin of said Long pond, not exceeding five rods in width, measuring from the verge of said pond, when the same shall be raised to the level of eight feet above the floor of the flume at the outlet thereof, and on and around the said other ponds and streams, so far as may be necessary for the preservation and purity of the same, for the purpose of furnishing a supply of pure water for the said city of Boston. The city of Boston shall, within sixty days from the time they shall take any lands, or ponds, or streams of water for the purposes of this act, file in the office of the registry of deeds, for the county where they are situate, a description of the lands, ponds, or streams of water so taken, as certain as is required in a common conveyance of lands, and a statement of the purpose for which taken, which said description and statement shall be signed by the said mayor.

May take and
hold land.
10 Cush. 295.

Shall file in
registry of
deeds, a de-
scription of
lands, ponds,
etc., taken.

May construct
aqueducts,
dams, reser-
voirs, etc.
Ibid. § 2-

2. The said city may, by and through the same agency, make and build one or more permanent aqueducts, from any of the aforesaid water sources, to, into, and through the said city, and secure and maintain the same by any works suitable therefor; may connect the said water sources with each other; may erect and maintain dams to raise and retain the waters therein; may make and maintain reservoirs within and without the said city; may make and establish such public hydrants, in such places as may, from time to time, be deemed proper, and prescribe the purposes for which they may be used, and may change or discontinue

be in the negative, this act shall be null and void. The act was accepted, April 13, 1846, by a vote of 4,637 yeas, to 348 nays. The water was introduced into the city of Boston, and the event celebrated, October 25, 1848. See "History of the Boston Water Works," published in 1868; and supplement to the same, published in 1876.

the same; may distribute the water throughout the city, and for this purpose may lay down pipes to any house or building in said city, the owner or owners thereof having notice and not objecting thereto; may regulate the use of the said water within and without the said city, and establish the prices or rents to be paid therefor. And the said city may, for the purposes aforesaid, carry and conduct any aqueducts, or other works, by them to be made and constructed, over or under any watercourse, or any street, turnpike-road, railroad, highway, or other way, in such manner as not to obstruct or impede travel thereon; and may enter upon and dig up any such road, street, or way, for the purpose of laying down pipes beneath the surface thereof, and for maintaining and repairing the same; and, in general, may do any other acts and things necessary, or convenient and proper, for the purposes of this act.

1846, c. 167, § 2.
May distribute water throughout the city, lay pipes, etc.

May dig up highways, etc., when necessary.

3. Three commissioners shall be appointed by the city council, who shall, during their continuance in office, execute and perform, and superintend and direct, the execution and performance of all the works, matters, and things mentioned in the preceding sections, which are not otherwise specially provided for in this act; they shall be subject to such ordinances, rules, and regulations, in the execution of their said trust, as the city council may from time to time ordain and establish, not inconsistent with the provisions of this act, and the laws of this commonwealth; they shall respectively hold their said offices for the term of three years next after their said appointment, unless the aqueducts and works aforesaid shall be sooner completed; but they, or either of them, after having had an opportunity to be heard in his or their defence, may be removed at any time by a concurrent vote of two-thirds of each branch of the city council; and in case of a vacancy in the board of commissioners by death, resignation, or removal, such vacancy shall be filled by the appointment of another commissioner, in manner aforesaid, who shall hold his said office for the residue of the said term of three years, with all the powers and subject to all the restrictions aforesaid. A major part of said commissioners shall be a quorum for the exercise of the powers and the performance of the duties of the said office; they shall, once in every six months, and whenever required by the city council, make and present, in writing, a particular report and statement of

Commissioners to be appointed. Their duties. Ibid. § 3.

Tenure of office.

Quorum.

1846, c. 167, § 3. all their acts and proceedings, and of the condition and progress of the works aforesaid.

Compensation of commissioners.

Ibid. § 4.

4. Before the appointment of the commissioners aforesaid, the city council shall establish and fix the salaries, or compensation, to be paid to the commissioners for their services; and the said salaries of the said commissioners, so established and fixed as aforesaid, shall not be reduced during their continuance, respectively, in said office.

Their powers to be exercised by the city, after their office shall cease.

Ibid. § 5.

5. Whenever the said office of commissioners shall cease, either by the expiration of the said term of three years from the original appointment, or by the completion of the aqueducts and works mentioned in the preceding sections of this act, all the rights, powers, and authority, given to the city of Boston by this act, shall be exercised by the said city, subject to all the duties, liabilities, and restrictions herein contained, in such manner, and by such agents, officers, and servants, as the city council shall from time to time ordain, appoint, and direct.

City of Boston shall be liable to pay all damages, sustained by taking land, etc.

Ibid. § 6.

8 Cush. 276.

10 Cush. 235.

100 Mass. 350.

Application to court in case of disagreement.

6. The said city of Boston shall be liable to pay all damages that shall be sustained by any persons, in their property, by the taking of any land, water, or water rights, or by the constructing of any aqueducts, reservoirs, or other works for the purposes of this act. And if the owner of any land, water, or water rights, which shall be taken as aforesaid, or other person who shall sustain damage as aforesaid, shall not agree upon the damages to be paid therefor, he may apply, by petition, for the assessment of his damages, at any time within three years from the taking of the said land, water, or water rights, as aforesaid, and not afterwards, to the court of common pleas,¹ in the county in which the same are situate; such petition may be filed in the clerk's office of said court, in vacation or in term time, and the clerk shall thereupon issue a summons to the city of Boston, returnable, if issued in vacation, to the then next term of the said court, and if in term time, returnable on such day as the said court shall order, to appear and answer to the said petition; the said summons shall be served fourteen days at least before the return day thereof, by leaving a copy thereof, and of the said petition, certified by the officer who shall serve the same, with the mayor or clerk of the said city; and

¹ Now the superior court for civil business.

the said court may, upon default or hearing of the said city appoint three judicious and disinterested freeholders of this commonwealth, who shall, after reasonable notice to the parties, assess the damages, if any, which such petitioner may have sustained as aforesaid, and the award of the said freeholders, or of the major part of them, being returned into and accepted by the said court, shall be final, and judgment shall be rendered and execution issued thereon for the prevailing party, with costs, unless one of the said parties shall claim a trial by jury, as hereinafter provided.

Court may appoint three freeholders to assess damages.
1846, c. 167, § 6.

7. If either of the parties mentioned in the preceding sections shall be dissatisfied with the amount of damages awarded as therein expressed, such party may, at the term at which such award was accepted, or the next term thereafter, claim, in writing, a trial in said court, and have a jury to hear and determine, at the bar of said court, all questions of fact relating to such damages, and to assess the amount thereof; and the verdict of such jury being accepted and recorded by the said court shall be final and conclusive, and judgment shall be rendered and execution issued thereon; and costs shall be recovered by the said parties, respectively, in the same manner as is provided by law in regard to proceedings relating to the laying out of highways.

Parties may claim a trial by jury, if dissatisfied with award.
Ibid. § 7.

See G. S. c. 43.
1874, c. 388.

8. No application shall be made to the court for the assessment of damages for the taking of any water rights, until the water shall be actually withdrawn or diverted by the said city under the authority of this act; and any person or corporation, whose water rights may be thus taken and affected, may make his application aforesaid, at any time within three years from the time when the waters shall be first actually withdrawn or diverted as aforesaid.

No application to be made for damages for taking water, until actually diverted, etc.
1846, c. 167, § 8.

9. Whenever any damages shall have been sustained by any persons in their property, by the taking of any land, water, or water rights, or by the constructing of any aqueducts, reservoirs, or other works, for the purposes of this act, and of the act entitled "An act for supplying the city of Boston with pure water," chapter one hundred and sixty-seven of the acts and resolves of the year eighteen hundred and forty-six, and such persons shall neglect to institute proceedings against the city of Boston, accord-

Where persons sustaining damages neglect to institute proceedings therefor, the city may commence such proceedings.
1849, c. 167, § 2.

1840, c. 187, § 2. ing to the provisions of the said act, for the space of five months, it shall be lawful for the city of Boston to commence such proceedings, which shall go on, and be determined in the same manner as if commenced by the persons who shall have sustained such damage. And if such persons, on receiving due notice, shall not come in and prosecute the proceedings so instituted, judgment shall be entered against them, and they shall be forever barred from recovering any damages under said act.

How such persons shall be barred.

City may tender to petitioner for damages, or bring into court, such sum as it shall think proper.
1850, c. 316.

Effect of such tender of payment.

10. In every case of a petition to the court of common pleas,¹ by any person, for the assessment of damages, as provided in the sixth, seventh, and eighth sections above, the city of Boston, by any of its officers, may tender to the complainant, or his attorney, any sum that it shall think proper, or may bring the same into court, to be paid to the complainant for the damages claimed in his petition; and if the complainant shall not accept the same, with his costs up to that time, but shall proceed in the suit, he shall be entitled to his costs up to the time of the tender, or such payment into court, and not afterwards, and the said city shall be entitled to recover its costs afterwards, unless the complainant shall recover greater damages than were so offered.

City council may issue water scrip, to defray expenses.
1846, c. 167, § 9.
See *post*, § 13.

See *post*, § 14.

11. For the purpose of defraying all the costs and expenses of such lands, estates, waters, and water rights, as shall be taken, purchased, or held for the purposes mentioned in this act, and of constructing all aqueducts and works necessary and proper for the accomplishment of the said purposes, and all expenses incident thereto, the city council shall have authority to issue from time to time notes, scrip, or certificates of debt, to be denominated, on the face thereof, "Boston Water Scrip," to an amount not exceeding in the whole the sum of three millions of dollars, bearing interest at a rate not exceeding the legal rate of interest in this commonwealth; and said interest shall be payable semi-annually, and the principal shall be payable at periods not more than forty years from the issuing of said scrip, notes, or certificates respectively. And the said city council may sell the same, or any part thereof, from time to time, at public or private

¹ Now the superior court for civil business.

sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as the said city council shall judge proper. 1846, c. 167, § 9.

12. Nothing in the preceding section shall be construed to prohibit the city council of the city of Boston from making temporary loans for the purposes therein set forth, to be redeemed within five years by the "Boston Water Scrip:" *provided*, that the amount of said scrip shall, in no case, exceed the amount named in the said section. City council may make temporary loans, to be redeemed within five years by water scrip. 1848, c. 33.

13. In addition to the notes, scrip, or certificates of debt, authorized to be issued by the eleventh section, the city council of the city of Boston are authorized to issue, from time to time, notes, scrip, or certificates of debt, to be denominated on the face thereof, "Boston Water Scrip," to an amount not exceeding, in the whole, the further sum of one million five hundred thousand dollars, for the same purposes, and in the same manner, and upon the terms and conditions specified in said section. Additional scrip may be issued by city council. 1849, c. 187, § 1. See ante, § 11.

14. In addition to the sum of three millions of dollars mentioned in the eleventh section, the said city council may, whenever and so far as deemed necessary, issue and dispose of notes, scrip, or certificates of debt, in the manner prescribed in the said eleventh section, to meet all payments of interest which may accrue upon any scrip by them issued: *provided, however*, that no scrip shall be issued for the payment of interest as aforesaid, after the expiration of two years from the completion of said aqueducts and other works; but payment of all interest that shall accrue after that time shall be made from the net income, rents, and receipts for the use of the water, if they shall be sufficient for that purpose; and if not, then the payment of the deficiency shall be otherwise provided for by the city council. All notes, scrip, and certificates of debt, to be issued as aforesaid, shall be signed by the treasurer and auditor, and countersigned by the mayor of the said city, and a record of all such notes, scrip and certificates shall be made and kept by the said treasurer and auditor respectively. They may also issue scrip for payment of interest. 1846, c. 167, § 10. But not after expiration of two years from completion of aqueducts, etc. Form of scrip. Record to be kept of same.

15. The city council shall, from time to time, regulate the price or rents for the use of water,¹ with a view to the payment from the City council to regulate the price of water.

¹ The act authorizing the establishment of the Boston Water Board, p. 928, *post*, gives said Board, when established, the power to establish and regulate the price or rents for the use of water.

1846, c. 167, § 11. net income, rents, and receipts therefor, not only of the semi-annual interest, but ultimately of the principal, also, of the "Boston Water Scrip," so far as the same may be practicable and reasonable. And the said net surplus income, rents, and receipts, after deducting all expenses and charges of distribution, shall be set apart as a sinking fund, and shall be appropriated for and towards the payment of the principal and interest of the said scrip; and shall, under the management, control, and direction of the mayor, treasurer, and auditor of the city, or the major part of them for the time being, who shall be trustees of the said fund, be applied solely to the use and purpose aforesaid, until the said scrip shall be fully paid and discharged. And the said trustees shall, whenever thereto required by the city council, render a just, true, and full account to the said city council of all their receipts, payments, and doings under the provisions of this section.

Net surplus income to be applied to payment of principal and interest of scrip.

See city docs. for
1848, No. 45.
1850, No. 13.
1852, No. 24.
1863, No. 47.

If surplus income insufficient to pay the interest, the supreme judicial court may, on petition, etc., appoint commissioners, who may raise the price of water.
1846, c. 167, § 12.

16. At any time after the expiration of two years from the completion of the works mentioned in the second section, and before the reimbursement of the principal of the "Boston Water Scrip," hereinbefore mentioned, if the surplus income and receipts for the use of the water distributed under the provisions of this act, at the price established by the city council, after deducting all expenses and charges of distribution, shall for any two successive years be insufficient to pay the accruing interest on the said scrip, then the supreme judicial court, on the petition of one hundred or more of the legal voters of the said city, praying that the said price may be raised and increased so far as may be necessary for the purpose of paying, from the said surplus income and receipts, the said accruing interest, and upon due notice of the pendency of such petition given to the said city in such manner as the said court shall order, may appoint three commissioners, who, upon due notice to the parties interested, may raise and increase the said price, if they shall judge proper, so far as may be necessary, in their judgment, for the purpose aforesaid, and no further. And the award of said commissioners, or the major part of them, being returned to the said court, at the then next term thereof for the county of Suffolk, and accepted by the said court, shall be binding and conclusive for the term of three years next after the said acceptance, and until the price so fixed by the commissioners shall, after the expiration of said term, be changed or altered by the city council.

17. If the surplus income and receipts for the use of the water, distributed under the provisions of this act, at the price established by the city council, after deducting all expenses and charges of distribution, shall, for any two successive years, be more than sufficient to pay the accruing interest on the "Boston Water Scrip," hereinbefore mentioned, then the supreme judicial court, on the petition of one hundred or more of the legal voters of the said city, who may deem the said price unreasonably high, and pray for the reduction thereof, and upon due notice of the pendency of said petition given to the said city in such manner as the said court shall order, may appoint three commissioners, who, upon due notice to the parties interested, may, if they shall judge proper, reduce the price established by the city council: *provided*, that such reduction shall not be so great that the surplus income and receipts aforesaid will, in the judgment of the said commissioners, be thereafter insufficient for the payment of the said accruing interest. And the award of the said commissioners, or the major part of them, being returned and accepted as mentioned in the preceding section, shall be binding and conclusive in the same manner, and to the same extent, as therein provided in regard to awards made pursuant to the provisions of that section.

If such income is more than sufficient, etc., the court may appoint commissioners, on petition, etc., who may reduce the price of water. 1846, c. 167, § 13.

Reduction shall not be so great, that such income will be insufficient, etc.

And the said court may, at their discretion, order the costs on such petitions as are mentioned in this and the preceding section, and of the proceedings thereon, or any part thereof, to be paid by either of the said parties, and may enter judgment and issue executions therefor accordingly.

Costs on such petitions.

18. The occupant of any tenement shall be liable for the payment of the price or rent for the use of the water in such tenement; and the owner thereof shall be also liable, if, on being notified of such use, he does not object thereto; and if any person or persons shall use any of the said water, either within or without the city, without the consent of the city, an action of trespass on the case may be maintained against him or them by the said city, for the recovery of damages therefor: *provided, however*, that this act shall not be so construed as to prevent the inhabitants of Natick, Framingham, Sherburne, and Wayland, from using so much of the water hereby granted as shall be necessary for extinguishing fires, and for all ordinary household purposes, under such regulations of

Occupant of tenement, and owner, both liable for price of water.

Ibid. § 14.

Action for use of water without consent of city.

Inhabitants of Natick, etc., may use a portion of same.

1846, c. 167, § 14. the said city council as may be essential for the preservation of the purity of the same.

PENALTY FOR DIVERTING OR CORRUPTING WATER.

Penalty for diverting or corrupting water.
Ibid. § 15.
108 Mass. 219.
110 Mass. 216.

19. If any person or persons shall wantonly or maliciously divert the water, or any part thereof, of any of the ponds, streams, or water sources, which shall be taken by the city pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery, or other property held, owned, or used by the said city, by the authority and for the purpose of this act, every such person or persons shall forfeit and pay to the said city three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action.¹ And every such person or persons may, moreover, on indictment and conviction of either of the wanton and malicious acts aforesaid, be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding one year, or by confinement to hard labor in the state prison for a term not exceeding ten years.

1861, c. 220, § 1.

S. J. C. may restrain discharge of drainage, etc., into waters of Lake Cochituate.
1875, c. 228, § 1.
Proviso.

20. It shall be lawful for the supreme judicial court, upon the application of the city of Boston, to grant an injunction against the discharge of any drainage or sewage matter, or pollution of any kind into Lake Cochituate, or Pegan brook, or any waters flowing into said lake or brook: *provided*, that this shall not be held to destroy the prescriptive right of any person or persons to discharge such matter into said lake or brook.

Sewerage in Natick.
Ibid. § 2.

21. The town of Natick shall have the right to divert the waters of any brook, rivulet or stream now running into Lake Cochituate, into which the sewerage or drainage of Natick now empties: *provided*, that nothing in this act shall be construed so as to give any right to said town to divert such brook, rivulet or stream into Charles river.

AUTHORITY TO PURCHASE AQUEDUCT PROPERTY.

City may purchase property,

22. The said city of Boston is hereby authorized to purchase and hold all the property, estates, rights, and privileges of the

¹ See also, "Health," *ante*, p. 397, § 94.

aqueduct corporation, incorporated by an act passed February twenty-seven, in the year one thousand seven hundred and ninety-five, and by any convenient mode may connect the same with their other works.¹

etc., of the aqueduct corporation.

1846, c. 167, § 16.

CONVEYANCE OF WATER TO EAST BOSTON.

23. The city of Boston is authorized to convey the water of Long pond to, into, and through that part of Boston called East Boston, by laying their aqueduct, or water-pipes, through the city of Charlestown and town of Chelsea; and, for that purpose, may have all the rights and privileges, and shall be subject to all the liabilities mentioned in the act entitled "an act for supplying the city of Boston with pure water." And the said city of Boston may make any suitable structures for the purpose of conveying the said water over or under the tide waters within the jurisdiction of this commonwealth: *provided*, that such structure shall be approved of by a commissioner, to be appointed for that purpose by the governor and council, and to be compensated by the city of Boston: *provided, further*, that the authority granted by this section shall not be exercised without the consent of the city council of said city first had and obtained.²

Water may be

conveyed to

East Boston

through

Charlestown

and Chelsea.

1849, c. 187, § 3.

Accepted by

city council,

May 28, 1849.

City Records,

vol. 27, p. 230.

24. By an act passed in eighteen hundred and fifty-one it was provided that the control granted to the city of Boston over tide-waters within the jurisdiction of this commonwealth, by the pre-

Restriction.

1851, c. 121.

¹ For acts respecting the aqueduct corporation, the property of which was purchased by the city of Boston, June 10, 1851, see St. 1794, c. 55; 1796, c. 1; 1803, c. 35. Also, city doc. 1851, no. 46.

² By an order of the city council, passed June 11, 1849, it was ordered, that the water commissioners be authorized and empowered, by virtue of the third section of the act of 1849, c. 187, to convey the waters of Long pond to East Boston: *provided* that the cost of the same shall not exceed the sum of four hundred thousand dollars; and that, in the execution of said authority, they shall have all the powers, so far as the same are proper and necessary, and be subject to all the duties and restrictions contained in the several ordinances of the city regulating the proceedings of the commissioners. "City Records," vol. 27, p. 272.

For authority to supply the state prison with Cochituate water, see St. 1852, c. 316.

1851, c. 121.

City may lay the water-pipes under the bridges of the Eastern railroad company.
1849, c. 201, § 7.

ceding section, should be restricted to the line then occupied by them for the purpose specified in the said section.

25. By an act passed in eighteen hundred and forty-nine, authorizing the Eastern railroad company to extend their road, it is declared lawful for the city of Boston, under the direction of a commissioner, to be appointed by the governor and council, and paid by the Eastern railroad company, to lay and construct their water-pipes under, or by the side of the bridges, to be constructed by said railroad corporation, for the purpose of conveying water into and through East Boston, without compensation to the said railroad corporation: *provided, however*, that said pipes shall be so laid, maintained, and repaired as not to retard, or in any manner obstruct, the regular and convenient use of said bridges for all the uses of said railroad company.

AUTHORITY TO RAISE DAM AT LAKE COCHITUATE.

City of Boston authorized to raise dam.
1859, c. 184, § 1.

May take and hold real estate.

Proviso.

26. The city of Boston is hereby authorized by and through the agency of the Cochituate Water Board therein, or by and through any other agency which shall be established therefor, by the city council of said city, to raise the dam at the outlet of Lake Cochituate, formerly called "Long pond," lying in the towns of Natick, Wayland, and Framingham, to the height of ten feet above the floor of "Knight's Flume," so-called; and may also take and hold, from time to time, by purchase or otherwise, any lands or real estate on and around the margin of said lake, not exceeding five rods in width, measuring from the verge of said lake, when the same shall be raised to the level authorized by this act, so far as such lands and real estate may be necessary for the preservation and purity of said lake, for the purpose of furnishing a supply of pure water for said city of Boston: *provided, however*, that no lands or real estate taken or purchased under this act, shall be exempted from taxation, by reason of such taking or purchase. All lands and real estate within said towns, heretofore taken or purchased, and now held by said city by virtue of an act approved March thirtieth, eighteen hundred and forty-six, or by virtue of any other act

heretofore passed, shall be and remain exempted from taxation, so long as they continue to be so held and used for the purposes of said acts.

Exemption from taxation.
1859, c. 184, § 1.

4 Gray, 500.

27. The said city of Boston shall be liable to pay all damages that shall be sustained by any persons in their property, by the taking of any land or real estate, or by the flowage of the lands of any person as aforesaid; and in regard to such taking and flowing, and the ascertainment and payment of all such damages, the said city of Boston, and all persons claiming damages, shall have all the rights, immunities, and remedies, and be subject to all the duties, liabilities, and obligations, which are provided in the one hundred and sixty-seventh chapter of the acts of the year one thousand eight hundred and forty-six, the one hundred and eighty-seventh chapter of the acts of the year one thousand eight hundred and forty-nine, and the three hundred and sixteenth chapter of the acts of the year one thousand eight hundred and fifty. Said city of Boston shall also indemnify said towns of Natick and Wayland against all injury which may at any time be done to any highway or bridge in such towns, by reason of the raising of the water, and maintaining the dam, as hereinbefore provided.

City to be liable for all damages sustained.

1859, c. 184, § 2.
Rights and remedies.

City to indemnify Natick and Wayland.

28. This act shall not take effect until said city of Boston shall have paid to the said town of Framingham the sum of forty-five hundred dollars; to the said town of Natick the sum of three thousand dollars; and to the said town of Wayland the sum of one thousand dollars; nor until said act shall have been accepted by the city council of the said city of Boston.¹

Act not to take effect until, etc.
Ibid. § 3.

WATER-PIPES ON MILLDAM.

29. The city of Boston shall have the right to maintain its water-pipes, as the same are now laid, in the milldam, and other lands of the commonwealth, in and near said city, subject to the provisions of this act: *provided*, that any person whose property is injured thereby shall have his damages ascertained and paid in the manner provided in the several acts to which this is in

City may maintain pipes on milldam and other lands.
1864, c. 271, § 1.
Provisos.

¹ These conditions were all complied with, and the act was accepted by the city council of Boston, May 6, 1859. See "City Records," vol. 37, p. 222.

1864, c. 271, § 1. addition; and *provided, further*, that if, at any time hereafter, the legislature shall order a draw to be made through the said milldam, or other lands on the line of said pipes, for the purposes of navigation, the city of Boston shall so adapt its said pipes, at the locality of the draw, as not to interfere with a free passage of boats and vessels through such draw.

City may enter
and dig up lands.
Ibid. § 2.
Proviso.

30. Said city may enter upon and dig up the ground in said milldam and other lands, when necessary for the purpose of repairing or replacing said pipes: *provided, however*, that said milldam and lands shall be restored by said city to as good order and condition as the same are in before such digging is commenced; and that the work shall be done in such manner and with such care as not to render any road, street or way, in which said pipes are laid, unsafe or unnecessarily inconvenient to the public travel thereon.

Indemnity to
commonwealth
and towns from
damages sus-
tained by de-
fects in high-
ways.
Ibid. § 3.

31. The city of Boston shall at all times save harmless and indemnify the commonwealth, and any city or town which may become liable to keep in repair any road, street, or way aforesaid, against all damages which may be recovered against them respectively, and shall reimburse to them respectively all expenses which they shall reasonably incur by reason of any defect or want of repair in such road, street, or way, caused by the maintenance, repairing, or replacing of said pipes, or by reason of any injury to persons or property caused by any defect or want of repair in said pipes: *provided*, that said city shall have due and seasonable notice of all claims for such damages or injury, and opportunity to make a legal defence thereto.

CHESTNUT-HILL RESERVOIR.

City council may
direct construc-
tion of an ad-
ditional reser-
voir.
1865, c. 131, § 1.

May secure cer-
tain lands in
Newton,
Brighton and
Brookline.

32. The city of Boston is hereby authorized, by and through the agency of the Cochituate water board therein, or by and through any other agency which shall be established therefor by the city council of said city, to construct and maintain an additional reservoir for receiving, holding and distributing water; and for this purpose may take and hold, by purchase or otherwise, any lands or real estate, not exceeding two hundred acres, in the towns of Newton, Brighton and Brookline, and lying between the Air Line railroad, the present line of the said city's

aqueduct and Beacon street on the south, Rockland and Brighton streets on the east, South street on the north, and a street leading from said South street to said Beacon street on the west : *provided*, 1865, c. 131, § 1. Proviso. *however*, that no part of the tract of land comprising the Evergreen cemetery, in the town of Brighton, shall be so taken and held, otherwise than by purchase.

33. The city of Boston may also, by and through the same agency, lay and maintain one or more suitable lines of pipes from the said reservoir to a convenient point in its line of pipes leading from its reservoir in said Brookline to said city ; and may take and hold, by purchase or otherwise, such lands or real estate as may be necessary therefor ; and may carry and conduct the said pipes over or under any water course, or any street, turnpike road, railroad, highway or other way, in such manner as not to obstruct or impede travel thereon ; and may enter upon and dig up any such road, street or way, for the purpose of laying the said pipes and for maintaining and repairing the same.

May lay the pipes from reservoir to pipes in Brookline. Ibid. § 2.

May secure lands. May cross water course or way.

34. The city of Boston shall at all times save harmless and indemnify any city or town which may become liable to keep in repair any road, street or way aforesaid, against all damages which may be recovered against them, respectively, and shall reimburse to them, respectively, all expenses which they shall reasonably incur by reason of any defect or want of repair in such road, street or way, caused by the maintenance, repairing or replacing of said pipes, or by reason of any injury to persons or property caused by any defect or want of repair in said pipes : *provided*, that said city shall have due and reasonable notice of all claims for such damages or injury, and opportunity to make a legal defence thereto.

City to be responsible for damages by reason of defect caused in ways. Ibid. § 3.

Proviso.

35. The city of Boston shall be liable to pay all damages that shall be sustained by any persons in their property by the taking of any land or real estate as aforesaid, or by any of its doings under this act ; and in regard to such taking, and the ascertainment and payment of all such damages, the city of Boston, and all persons claiming damages, shall have all the rights, immunities and remedies, and be subject to all the duties, liabilities and obligations which are provided in the one hundred and sixty-seventh chapter of the acts of the year one thousand eight hun-

Liable for damages to private property. Ibid. § 4.

City to be subject to acts of 1846, 1849 and 1850.

1865, c. 131, § 4. dred and forty-six, the one hundred and eighty-seventh chapter of the acts of the year one thousand eight hundred and forty-nine, and the three hundred and sixteenth chapter of the acts of the year one thousand eight hundred and fifty.

City council may issue debt certificates to defray expenditures. Ibid. § 5.

36. For the purpose of defraying all the costs and expenses of such lands or real estate as shall be taken, purchased or held for the purposes mentioned in this act, and of constructing said reservoir, laying said pipes, and doing all other things incident thereto, the said city council shall have authority to issue, from time to time, notes, scrip or certificates of debt, to such an amount as may be necessary, and in such form, on such length of time, and bearing such rate of interest, not exceeding six per centum per annum, as they shall deem expedient.

CONVEYANCE OF WATER TO DEER ISLAND.

Boston may lay water-pipes across Shirley gut to Deer island. 1869, c. 193, § 1.

37. By an act passed April twenty-fourth, eighteen hundred and sixty-nine, the city of Boston is authorized to convey water from East Boston, so-called, to Deer Island, in Boston harbor, by laying aqueducts or water-pipes through the town of Winthrop and across Shirley Gut; and for that purpose shall have all the rights and privileges, and shall be subject to all the liabilities mentioned in chapter one hundred and sixty-seven of the acts of the year eighteen hundred and forty-six, and the several acts in addition thereto. And the said city of Boston may make any suitable structures for the purpose of conveying the said water under the tide-waters in said Shirley Gut: *provided*, that such structures shall be approved by the harbor commissioners.

May erect structures, subject to approval of harbor commissioners.

CONVEYANCE OF WATER ACROSS SOUTH BAY.

Boston may lay water-pipes to Pine island; thence across Roxbury canal and South bay by siphons. 1869, c. 447, § 1.

38. By an act passed June twenty-second, eighteen hundred and sixty-nine, the city of Boston was authorized to lay water-pipes from a point at or near the junction of Federal and Dorchester streets, in said city, in a westerly direction, crossing the Boston, Hartford and Erie railroad to Pine island, so called; thence in a westerly direction, crossing the marsh and the Roxbury canal to the junction of East Chester park and Albany street in said city: *provided*, that such pipe or pipes shall cross the Roxbury canal by

Proviso.

means of a siphon, so as not to obstruct navigation ; and shall also ^{1869, c. 447, § 1.} cross the South bay by siphon under so much of the channel as the harbor commissioners shall direct. And all things done under the act, so far as relates to the crossing of tide-waters, shall be subject to the determination and approval of the harbor commissioners, as provided in the fourth section of chapter one hundred and forty-nine of the acts of the year eighteen hundred and sixty-six.

AUTHORITY TO LAY NEW MAIN PIPES FROM RESERVOIR.

39. The city of Boston is hereby authorized, by and through the agency of the Cochituate water board therein, to construct an aqueduct, or to lay new main pipes from its reservoir, constructed under the provisions of the one hundred and thirty-first chapter of the acts of the year eighteen hundred and sixty-five, through the towns of Brighton and Brookline, to the city of Boston, and to continue the same into and through the city of Boston, in the manner provided in the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six ; and for this purpose may take and hold, by purchase or otherwise, any lands or real estate necessary therefor ; and may construct said aqueduct, or lay said pipes over or under any water course, or any streets, turnpike roads, railroads, highways, or other ways, in such ways as not to obstruct or impede the travel thereon ; and may enter upon and dig up any such roads, streets or ways, for the purpose of constructing said aqueduct, or laying down said pipes beneath the surface thereof, and for maintaining and repairing the same ; but always in such manner and with such care as not to render the roads, streets and ways unsafe or unnecessarily inconvenient to the public travel thereon. And said city of Boston, in performing said work, shall be subject to such reasonable regulations as to time, place and manner of digging up any streets or ways of public travel for the purpose aforesaid, and the laying of said pipes, as shall be made by the selectmen of Brighton and of Brookline, within their respective limits, for the protection of their rights of drainage and sewerage therein.

City may lay
new pipes from
reservoir.
1871, c. 185, § 1.

May take land.

City of Boston
to be subject to
reasonable reg-
ulations pre-
scribed by
Brighton and
Brookline.

40. Whenever the city of Boston shall dig up any street or way, as aforesaid, it shall restore the same to as good order and condi- ^{Streets to be re-} stored to good

order and condition.
1871, c. 185, § 2.

Towns to be reimbursed by Boston for damages paid for defects in high-ways.

Liability of Boston for damages for taking land, etc.
Ibid. § 3.

Hydrants to be constructed in Brighton and Brookline upon request of selectmen.
Ibid. § 4.

Boston may take water from Sudbury river and Farm pond.
1872, c. 177, § 1.

tion as the same shall be in when such digging commenced; and the city of Boston shall at all times indemnify and save harmless the town of Brighton and the town of Brookline, against all damage which may be recovered against them, respectively, and shall reimburse to them, respectively, all expenses which they shall incur by reason of any defect or want of repair in any street or way, caused by the construction of said aqueduct or the laying of said pipe, or by the maintaining or repairing of the same: *provided*, that said city shall have due and reasonable notice of all claims for such damages or injury, and opportunity to make a legal defence thereto.

41. The city of Boston shall be liable to pay all damages that shall be sustained by any persons in their property by the taking of any land or real estate, or constructing of said aqueduct, or the laying of said pipe as aforesaid; and any person sustaining damage as aforesaid may have the same ascertained, determined, collected and paid in the manner which is provided in the-sixth, seventh and eighth sections of the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six.

42. The selectmen of the town of Brighton and the selectmen of the town of Brookline may require the city of Boston, while constructing said aqueduct, or laying down said pipe, within their respective limits, to insert therein a number of hydrants, at points not less than five hundred feet apart, to be used for the purpose of extinguishing fires, and no other purpose; and the town of Brighton and the town of Brookline shall pay the expenses of keeping in repair all such hydrants as shall be so inserted, upon their respective requisitions, after the same shall have been constructed.¹

AUTHORITY TO TAKE WATER FROM SUDBURY RIVER AND FARM POND.

43. The city of Boston is hereby authorized, by and through the agency of the Cochituate water board, to take, hold and convey to, into and through said city, all the water of Sudbury river, so called, said water to be taken at any point or points within the town of Framingham, or higher up on said river, and the water of Farm pond, so called, in said town of Framingham, and the waters

¹Accepted, as required by section 5 of the act, June 16, 1871.

which may flow into and from said river and pond, and to take any water rights in or upon said river or pond, in or above the town of Framingham, or connected therewith. Said city may also take and hold, by purchase or otherwise, in connection with the said sources of supply, any lands and real estate necessary for increasing or preserving the purity of the water, or for laying, building and maintaining aqueducts, water courses, reservoirs, dams, buildings, machinery and other structures and appliances, with their accessories, for conducting, elevating purifying, storing, discharging, disposing of and distributing water; and may also take and hold any land, excepting any in the town of Framingham heretofore taken or purchased by any railroad company, on the margin of said sources of supply, not exceeding five rods in width from the high-water line of said river, storage, reservoirs or pond, so far as may be necessary, in the opinion of said Cochituate water board, for the preservation and purity of the same, for the purpose of furnishing a supply of pure water for the city of Boston.

44. For the purposes of this act, the said city may make and build one or more permanent aqueducts from the aforesaid water sources to Chestnut-hill reservoir, so called, or to any other reservoir owned by said city, and secure and maintain, the same by any works suitable therefor; may connect the said water sources with Lake Cochituate; may erect and maintain dams, or may increase the height of, and strengthen and maintain, existing dams to raise the water above the same, or to form storage reservoirs; may make and maintain reservoirs within and without said city; may erect and maintain buildings and machinery for elevating the water, and lay down pipes for conducting the same; may build and maintain filters, or other means of purifying the water. And the said city may, for the purposes aforesaid, carry and conduct any aqueduct, or other work, by it to be made and constructed, under or over any water course, or any street, turnpike road, railroad, highway or other way, in such a manner as not to unnecessarily obstruct or impede travel thereon; and may enter upon and dig up any such road, street or way, for the purpose of laying down pipes beneath the surface thereof, and for maintaining and repairing the same; and in general may do any other acts and things necessary or convenient and proper for the purposes of this act. Said city

1872, c. 177, § 1.

May take and hold lands for preserving the purity of water or for building aqueducts, etc.

May build permanent aqueducts to connect with reservoirs. Ibid. § 2.

May connect water sources with Lake Cochituate.

May maintain reservoirs and filters.

May enter upon and dig up streets for laying down pipes, subject to regulations prescribed by se-

lectmen of
towns.
1872, c. 177, § 2.

of Boston, in entering upon or digging up any such road, street or way of public travel, shall be subject to such reasonable regulations as shall be made by the selectmen of the towns wherein such work shall be performed, for the protection of their rights of drainage and sewerage therein.

May take lands
necessary for
building dams
and reservoirs
for storing and
discharging
water.
Ibid. § 3.

45. The city of Boston is hereby further authorized, by and through the agency of said Cochituate water board, if said board shall deem expedient, to store and distribute water for maintaining and equalizing the flow of water in the river selected by said city as its source of supply, or in the rivers into which said river may discharge, and for this purpose said city may take and hold such land and real estate as may be necessary for building and maintaining dams, reservoirs or other structures and appliances for storing and discharging water. And the said city may, through the same agency, make and build such dams, reservoirs and other structures and appliances, at any point or points upon the said Sudbury river, and upon any and all streams flowing into the same.

Restrictions as
to amount of
water to be
taken from Sud-
bury and Assa-
bet rivers and
Farm pond.
Ibid. § 4.
1875, c. 168.

46. Nothing contained in this act shall be so construed as to authorize the city of Boston to reduce the water in Sudbury river below a sufficient height to maintain at all times a running stream therein, which shall flow at least one and one-half million gallons a day for each and every day in the year, or to draw from Farm pond or Sudbury river into Lake Cochituate when the water runs over the dam at Lake Cochituate, or to prevent the inhabitants of the towns of Framingham, Ashland, Southborough, Hudson and Westborough from taking from the Sudbury or Assabet rivers or Farm pond, or the inhabitants of the town of Hopkinton from taking from the Sudbury river and its tributaries, so much of the water hereby granted as shall be necessary for extinguishing fires, and for all ordinary domestic and household purposes, and for the generation of steam, or from cutting and carrying away ice from said pond; or as to prevent the Boston and Albany Railroad Company, or the Mansfield and Framingham Railroad Company, or the Boston, Clinton and Fitchburg Railroad Company from taking water from Farm pond, for use in locomotive or other engines, or for other railroad purposes, under such regulations of the city council of the city of Boston as may be essential for the preservation of the purity of the same.

47. The city of Boston shall be liable to pay all damages that shall be sustained by any persons in their property, by the taking of or injury to any land, real estate, water or water rights, or by the flowage of the lands of any persons, or by the interference with, or injury to any use or enjoyment of the water of said river to which any person, at the time of such taking, is legally entitled, or by any other doings under this act; and in regard to such taking, injury, interference and flowage, and the ascertainment and payment of all such damages, the said city of Boston, and all persons claiming damages, shall have all the rights, immunities and remedies, and be subject to all the duties, liabilities and regulations which are provided in the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six, and the three hundred and sixteenth chapter of the acts of the year eighteen hundred and fifty.

Liability for damages.
1872, c. 177, § 5.
See 1874, c. 338.

48. Whenever the city of Boston shall dig up any street or way, as aforesaid, it shall restore the same in as good order and condition as the same shall be in when such digging commenced; and the city of Boston shall, at all times, indemnify and save harmless the several towns within which such street or way may be, against all damages which may be recovered against them respectively, and shall reimburse to them all expenses which they shall incur by reason of any defect or want of repair in any street or way caused by the construction of any of said works, or laying of said pipes, or by the maintaining or repairing the same: *provided*, that said city shall have due and reasonable notice of all claims for such damages or injury, and opportunity to make a legal defence thereto.

Streets to be restored to original order and condition.
Ibid. § 6.
Boston liable for defects in streets occasioned by laying pipes.

Proviso.

49. If any person or persons shall wantonly or maliciously divert the water, or any part thereof, of any of the rivers, ponds, streams or water sources, which shall be taken by the city, pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery or other property held, owned or used by the said city, by the authority and for the purposes of this act, every such person or persons shall forfeit and pay to the said city three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action. And every such

Penalties for maliciously diverting water or rendering the same impure.
Ibid. § 7.

1872, c. 177, § 7. person or persons may, moreover, on indictment and conviction of either of the wanton and malicious acts aforesaid, be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding one year, or by confinement to hard labor in the state prison for a term not exceeding ten years.

Boston may supply Framingham, Newton, W. Roxbury, Brighton and Brookline with pure water. Ibid. § 8.

50. The city of Boston is authorized, if said city shall deem it expedient so to do, to supply the towns of Framingham, Newton, West Roxbury, Brighton and Brookline, or either of them, with water, in such quantities, under such conditions and upon such terms as may be agreed upon between said city and said towns, or either of them; and such towns shall respectively have power to distribute the water so supplied among the inhabitants of said towns.

Water for state normal school buildings in Framingham. Ibid. § 9.

51. The commonwealth may take and convey water from said Sudbury river, or any of the reservoirs to be constructed by said city, to and for the use of the state normal school buildings, in said town of Framingham.

PARKER-HILL RESERVOIR.

May construct a reservoir at Parker hill. 1873, c. 287, § 1.

52. The city of Boston, by and through the agency of the Cochituate water board therein, or by and through any other agency which shall be established therefor by the city council of said city, may construct and maintain an additional reservoir for receiving, holding and distributing water; and for this purpose may take and hold, by purchase or otherwise, any real estate not exceeding five acres at or near the summit of Parker hill, so called, in ward fifteen in said city.

May lay pipes, and enter upon and dig up streets. Ibid. § 2.

53. The city of Boston may also, by and through the same agency, lay and maintain one or more suitable lines of pipes from the said reservoir to a convenient point in Fisher avenue, so called, and from said point along said Fisher avenue to Parker street in said city; and may take and hold, by purchase or otherwise, such real estate as may be necessary therefor; and may carry and conduct the said pipes over or under any water course, or any street, turnpike road, railroad, highway, or other way, in such manner as not to unnecessarily obstruct or impede travel thereon; and may enter upon and dig up any such road, street or way, for the pur-

pose of laying the said pipes and for maintaining and repairing the same. 1873, c. 237, § 2.

54. The city of Boston shall be liable to pay all damages sustained by any persons in their property, by the taking of any real estate as aforesaid, or by any of its doings under this act; and in regard to such taking, and the ascertainment and payment of all such damages, the city of Boston, and all persons claiming damages, shall have all the rights, immunities and remedies, and be subject to all the duties, liabilities and obligations which are provided in the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six, the one hundred and eighty-seventh chapter of the acts of the year eighteen hundred and forty-nine, and the three hundred and sixteenth chapter of the acts of the year eighteen hundred and fifty. Liability for damages. Ibid. § 3.

55. For the purpose of defraying all the costs and expenses of such real estate as shall be taken, purchased or held for the purposes mentioned in this act, and of constructing said reservoir, laying said pipes, and doing all other things incident thereto, the said city council may issue, from time to time, notes, scrip or certificates of debt, to such an amount as may be necessary, and in such form, on such length of time, and bearing such rate of interest, not exceeding six per centum per annum, as they shall deem expedient. May issue scrip at six per cent. interest. Ibid. § 4.

AUTHORITY TO TAKE WATER FROM MYSTIC POND.

56. The city of Charlestown is hereby authorized to take, hold and convey by steam or other power, to, into and through the said city, by suitable aqueducts or pipes, the waters of Mystic pond so called, in the towns of Medford, West Cambridge and Winchester, and the waters which may flow into and from the same, and may also take and hold, by purchase or otherwise, any land, real estate or water rights necessary for erecting, laying and maintaining, and may erect, lay and maintain, such aqueducts, pipes, dams, gates, pumps, bridges, reservoirs, embankments, waterways, drains or other structures, as may be necessary or convenient to insure the purity of the waters of said pond, or the ponds and streams running into it, or to convey said waters into, and for Charlestown authorized to take water of Mystic pond. 1861, c. 105, § 1.

1861, c. 105, § 1. the use of the said city of Charlestown: *provided, however*, that said city shall not divert or draw water from any part of said Mystic pond lying southerly of the "narrows" or "partings," so called in said pond. And said city of Charlestown shall have power to erect and maintain a dam between the upper and lower portions of said Mystic pond at the said "narrows" or "partings," so as to exclude the waters of the lower part from those of the upper, and raise the waters of the upper pond as high as they may judge necessary for the purposes of this act, not to exceed, however, the level of "Bacon's dam," so called. And said city of Charlestown shall not erect any dam across Mystic river or obstruct, or exclude the free flow of the tide into the lower Mystic pond. Said city of Charlestown shall make and maintain a suitable fish-way in the dam hereby authorized to be constructed by them at the "partings," or "narrows," so called, and upon request, in writing, made to the mayor of said city, by any member of the fish committees of the towns of Medford or West Cambridge, on or after the first day of March in each year, the same shall be forthwith opened for the passage of fish, and left open until the first day of the next September, unless a majority of both of said committees shall sooner consent to have the same closed.

Lay down pipes. 57. For the purposes of distribution, the city may lay down
 Ibid. § 2. pipes to any house or building in said city, the owner or owners thereof having notice and not objecting thereto, and may make and establish public hydrants in such places as may, from time to time, be deemed proper, and prescribe the purposes for which they may be used, and may change or discontinue the same; may regulate the use of the water within and without the said city, and establish the prices or rents to be paid for the use thereof. And the said city may, for the purposes aforesaid, carry and conduct any aqueducts or other works by them to be made and constructed, over or under any water course, or any street, turnpike road, highway or other way, in such manner as not to obstruct or impede travel thereon, or the free flow of water therein. In carrying the pipes or conduits of said aqueduct across Mystic river, the same shall either be carried below the level of the bed of said river, or the bridge or other structure on which the same is carried over

Establish hy-
 drants.

Water rates.

Build aque-
 ducts.

Carry pipes
 across Mystic
 river.

said river shall be elevated at least three feet in the clear above high-water level at the point where the same may cross said river ; and may enter upon and dig up any such road, street, or way, for the purpose of laying down said aqueducts or other works, and for maintaining and repairing the same. 1861, c. 105, § 2.

58. Three commissioners shall be appointed by the city council, who shall, during their continuance in office, execute and perform, superintend and direct, the execution and performance of all the works, matters and things mentioned in the preceding sections, which are not otherwise specially provided for in this act ; they shall be subject to such ordinances, rules and regulations, in the execution of their said trust, as the city council may, from time to time, ordain and establish, not inconsistent with the provisions of this act and the laws of this commonwealth ; they shall respectively hold their said office for the term of two years next after their said appointment, unless the aqueducts and works aforesaid shall be sooner completed ; but they, or either of them, after having had an opportunity to be heard in his or their defence, may be removed at any time by a concurrent vote of two-thirds of each branch of the city council ; and in case of a vacancy in the board of commissioners, by death, resignation or removal, such vacancy shall be filled by the appointment of another commissioner, in manner aforesaid, who shall hold his said office for the residue of the said term of two years, with all the powers and subject to all the restrictions aforesaid. A major part of said commissioners shall be a quorum for the exercise of the powers, and the performance of the duties of the said office ; they shall, once in every three months, and whenever required by the city council, make and present in writing, a particular report and statement of all their acts and proceedings, and of the condition and progress of the works aforesaid. Appointment of commissioners. Ibid. § 3.

59. Before the appointment of the commissioners aforesaid the city council shall establish and fix the salaries, or compensation, to be paid to the commissioners for their services ; and the said salaries of the said commissioners so established and fixed as aforesaid, shall not be reduced during their continuance, respectively, in said office. Compensation of commissioners. Ibid. § 4.

60. Whenever the said office of commissioner shall cease, either City to exercise

powers on expiration of commission.

1861, c. 105, § 5.

by the expiration of the said term of two years from the original appointment, or by the completion of the aqueducts and works mentioned in the preceding sections of this act, all the rights, powers and authority given to the city of Charlestown by this act shall be exercised by the said city, subject to all the duties, liabilities and restrictions herein contained, in such manner and by such agents as the city council shall, from time to time, ordain, appoint and direct.

Liability for damages.

Ibid. § 6.

See 1874, c. 358.

61. The said city of Charlestown shall be liable to pay all damages that shall be sustained by any persons in their property by the taking of any land, water or water rights, or by the constructing of any aqueducts, reservoirs, or other works, for the purposes of this act. And if the owner of any land, water, or water rights, which shall be taken as aforesaid, or other person who shall sustain damage as aforesaid, shall not agree upon the damages to be paid therefor, he may apply, by petition, for the assessment of his damages, at any time within three years from the taking of the said land, water or water rights, or sustaining damage as aforesaid, and not afterwards, to the superior court in the county in which the same are situate, unless sooner barred, as is provided in the section next following. Such petition may be filed in the clerk's office of said court, in vacation or in term time, and the clerk shall thereupon issue a summons to the city of Charlestown, returnable, if issued in vacation, to the then next term of the said court, and if in term time, returnable on such day as the said court shall order, to appear and answer to the said petition; the said summons shall be served fourteen days at least before the return day thereof, by leaving a copy thereof, and of the said petition, certified by the officer who shall serve the same, with the mayor or clerk of said city; and the said court may, upon default or hearing of the said city, appoint three disinterested freeholders of this commonwealth, who shall, after reasonable notice to the parties, assess the damages, if any, which such petitioner may have sustained as aforesaid; and the award of the said freeholders, or of the major part of them, being returned into and accepted by the said court, shall be final, and judgment shall be rendered and execution issued thereon for the prevailing party, with costs, unless one of the said parties shall claim a trial by jury, as hereinafter provided.

Assessment of damage in court.

62. Whenever any damages shall have been sustained by any persons, as set forth in the preceding section of this act, and such persons shall neglect to institute proceedings against the city of Charlestown, according to the provisions of this act, for the space of twelve months, it shall be lawful for the city of Charlestown to commence such proceedings, which shall go on and be determined in the same manner as if commenced by the persons who shall have sustained such damage; and if such persons, on receiving due notice, shall not come in and prosecute the proceedings so instituted, judgment shall be entered against them, and they shall be forever barred from recovering any damages under this act.

City may commence proceedings when, etc.
1861, c. 105, § 7.

63. If either of the parties mentioned in the sixth section [§ 61 of this digest] shall be dissatisfied with the amount of damages awarded as therein expressed, such party may, at the term at which such award was accepted, or the next term thereafter, claim, in writing, a trial in said court, and have a jury to hear and determine, at the bar of said court, all questions of fact relating to such damages, and to assess the amount thereof; and the verdict of such jury, being accepted and recorded by the said court, shall be final and conclusive, and judgment shall be rendered and execution issued thereon, and costs shall be recovered by the said parties respectively, in the same manner as is provided by law, in regard to proceedings relating to the laying out of highways.

Trial by jury.
Ibid. § 8.

64. No application shall be made to the court for the assessment of damages for the taking of any water rights, until the water shall be actually withdrawn or diverted by the said city, under the authority of this act.

Application for damages, when made.
Ibid. § 9.

65. In every case of a petition to the Superior Court for the assessment of damages, as provided in the four preceding sections of this act, the city of Charlestown, by any of its officers, may tender to the complainant, or his attorney, any sum that they shall think proper, or may bring the same into court, to be paid to the complainant for the damages by him incurred or claimed in his petition; and if the complainant shall not accept the same, with his costs up to that time, but shall proceed in the suit, he shall be entitled to his costs up to the time of the tender, or such payment into court, and not afterwards; and the said city

Tender by city to complainant.
Ibid. § 10.

1861, c. 105, § 10. shall be entitled to recover its costs afterwards, unless the complainant shall recover greater damages than were so offered.

City may issue scrip.

Ibid. § 11.

66. For the purpose of defraying all the costs and expenses of such lands, estates, waters and water rights as shall be taken, purchased or held for the purposes mentioned in this act, and of constructing all aqueducts and works necessary and proper for the accomplishment of the said purposes, and all expenses incident thereto, heretofore incurred, or that may be hereafter incurred, the city council shall have authority to issue, from time to time, scrip, notes or certificates of debt, to be denominated on the face thereof,

Amount not to exceed \$500,000.

“Water Bonds of the City of Charlestown,” to an amount not exceeding five hundred thousand dollars, bearing interest at a rate not exceeding the legal rate of interest in this commonwealth, which shall be redeemable at a period of time not less than ten, nor more than fifty, years from and after the issue of the said scrip, notes or certificates, respectively; and the said city council may sell the same, or any part thereof, from time to time, at public or private sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as the said city council shall judge proper; and the said city council may, for the purpose of meeting payments of such interest as may accrue upon any certificate of debt, make such further issue of scrip, notes or certificates of debt as may be necessary therefor.

Additional bonds.

1864, c. 176.

1865, c. 135.

67. By an act passed in 1864, the city council was authorized to issue additional water-bonds to an amount not exceeding two hundred thousand dollars. By an act passed in 1865, the city council was authorized to issue additional bonds to an amount not exceeding two hundred and fifty thousand dollars; and it was provided that all bonds thereafter issued might be redeemable at a period of not less than one, nor more than fifty, years from and after the issue of such bonds respectively. By an act passed

1870, c. 216, § 4.

in 1870, the city was authorized to issue additional bonds to an amount not exceeding three hundred thousand dollars. By an act

1871, c. 159, § 1.

passed in 1871, the city was authorized to issue additional bonds to an amount not exceeding one hundred and ten thousand dollars, the said bonds to bear interest at a rate not exceeding six per centum per annum, and to be redeemable at a period of time not less than ten, nor more than thirty, years from and after the issue

thereof. It was also provided that the income derived from water-rates, under the several acts authorizing the construction and extension of water works in said city, after deducting cost of maintenance, and interest on the water-bonds, should be applied to the reduction of the water debt, and should not be used for any other purpose whatever. By an act passed in 1872, the city was authorized to issue additional bonds to an amount not exceeding one hundred thousand dollars, upon the same terms as those contained in the act of 1871, and the same provisions were made for the maintenance of a sinking fund.

Sinking fund
provided.
1871, c. 159, § 2.

1872, c. 85

68. The city council may, from time to time, pass such by-laws and ordinances as they may deem proper for the preservation and protection of all or any of the works connected with the supplying of the city of Charlestown with pure and wholesome water, under and by virtue of this act: *provided*, such by-laws and ordinances are not inconsistent with any of the laws of this commonwealth, or with the constitution thereof, subject at any time to be repealed or modified by the legislature; and may also organize a department, with full powers for the management of such works, and the distribution of the said water. By Statute 1870, c. 216, § 6, the provisions of this section were extended and made applicable to any and all additional works constructed under the provisions of that act.

City may pass
by-laws.
1861, c. 105, § 12.
1870, c. 216, § 6.

69. The city council shall, from time to time, regulate the price or rent for the use of the water, with a view to the payment, from the net income and receipts, not only of the semi-annual interest, but ultimately of the principal of said debt so contracted, so far as the same may be practicable and reasonable. And the occupant of any tenement shall be liable for the payment of the price or rent for the use of the water in such tenement; and the owner thereof shall be also liable, if, on being notified of such use, he does not object thereto; and if any person or persons shall use any of the said water, either within or without the said city, without the consent of the city, an action of tort may be maintained against him or them for the recovery of damages therefor: *provided, however*, that this act shall not be so construed as to prevent the inhabitants of Medford, West Cambridge and Winchester from using so much of the water hereby granted as shall

Water rates.
1861, c. 105, § 13.

Proviso.

1861, c. 105, § 13. be necessary for extinguishing fires, and for all ordinary household purposes, under such regulations of the said city council as may be essential for the preservation of the purity of the said water.

Penalty for diverting or corrupting water.
Ibid. § 14.

70. If any person or persons shall wilfully or maliciously divert the water, or any part thereof, of any of the ponds, streams or water-sources, which shall be taken by the city pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, aqueduct, pipe, conduit, hydrant, machinery or other property held, owned or used by the said city by the authority and for the purposes of this act, such person or persons shall forfeit and pay to the said city three times the amount of the damages that shall be assessed therefor, to be recovered by any proper action. And such person or persons may, moreover, on indictment and conviction of either of the wilful and malicious acts aforesaid, be punished by fine not exceeding one thousand dollars, and imprisonment not exceeding one year.

City authorized to supply water for extinguishing fires, etc., in Chelsea.
Ibid. § 15.

71. The said city of Charlestown is also authorized to supply with water for the extinguishment of fires, or for other purposes, the cities of Chelsea¹ and Boston, and the towns through which the line of aqueduct may pass, and for this purpose may erect and maintain such structures as may be requisite and necessary therefor: *provided*, that such supply to Boston shall not deprive the towns on the line of the aqueduct of a sufficient supply of water.

Shall erect and maintain hydrants in Somerville and Medford.
Ibid. § 16.

72. The said city of Charlestown shall erect and maintain proper hydrants at such points along the line of the aqueduct as the selectmen of the towns of Somerville and Medford shall direct: *provided, however*, the said city of Charlestown shall not be required to erect and maintain such hydrants at points nearer together than five hundred feet; and said towns of Somerville and Medford may at all times draw water from said hydrants without charge therefor, for the extinguishment of fires, under such regulations as the city of Charlestown may, from time to time, establish under authority of this act; and the rates of water supplied to the

¹ By St. 1865, c. 144, the city of Chelsea was authorized to procure a supply of water from Charlestown.

inhabitants of said towns of Somerville¹ and Medford² for other purposes than the extinguishment of fires, as provided in the preceding section, shall not exceed the rates charged for like uses in said city of Charlestown, and the payment or rental for the use of such water shall be made and collected in the same manner as hereinbefore provided for the water distributed in the said city of Charlestown. In case the pipes for distributing said water shall be laid without expense to said city of Charlestown, such charge or rental shall be made for the use of said water as may be agreed upon by and between said towns respectively and said city of Charlestown.³

Water rates for
Somerville and
Medford.
1861, c. 105, § 16.

TEMPORARY TIDE-GATES ACROSS MYSTIC RIVER.

73. The city of Charlestown is hereby authorized for the purpose of constructing and repairing the works authorized by "An act for supplying the city of Charlestown with pure water," approved on the twenty-eighth day of March, in the year eighteen hundred and sixty-one, temporarily to lower the waters of Mystic pond, by erecting temporary tide-gates across Mystic river, at such times and in such manner as may be necessary for said purpose: *provided*, that such tide-gates shall not be erected at any point on said river below Alewife brook, nor allowed at any time to continue longer than shall be absolutely required for the construction or repair of said works, and that said city shall be liable for all damages occasioned by its proceedings under this act, to be recovered by the party sustaining the same, in the manner provided in the act above referred to.

Authority to
erect tide-gates
across Mystic
river.
1863, c. 9, § 1.

74. If at any time the governor and council shall deem such temporary tide-gates across the Mystic river prejudicial to the harbor of Boston, they shall have power to order said tide-gates to be

Governor and
council may re-
move tide-gates.
Ibid. § 2.

¹By Sts. 1866, c. 212, and 1868, c. 202, Somerville and Malden were authorized to procure a supply of water from Charlestown.

²By St. 1867, c. 60, Medford was authorized to procure a supply of water from Charlestown.

³As required by the seventeenth section, this act was submitted to, and approved by, the voters of the city of Charlestown on the tenth of September, 1861. Yeas, 944; nays, 251.

1863, c. 9, § 2. removed within forty-eight hours, and, if not so removed, the governor and council may cause the same to be removed at the expense of said city of Charlestown.

ADDITIONAL MAINS, MYSTIC DEPARTMENT.

Charlestown may lay additional line of mains from water works in Somerville. 1870, c. 216, § 1. 75. The city of Charlestown is hereby authorized to locate and lay a second line of force and supply mains or aqueducts from the engine house of the Charlestown water works in Somerville, to the city of Charlestown, and to enlarge its present engine house, or make such additions thereto as may hereafter in the opinion of said city become necessary, and to take and to hold, by purchase or otherwise, any land, real estate, or water rights, necessary for erecting, laying and maintaining the same. And for the purposes aforesaid, said city may carry and conduct any aqueduct or other works by it to be made, and constructed, over or under any water course or any street, turnpike road, highway or other way, in such manner as not to obstruct or impede travel thereon, or the free flow of water therein, and may enter upon and dig up any such land, street or way as may be necessary for the purpose of laying down such aqueducts or other works, and for maintaining or repairing the same.

Mystic water board, rights, etc. Ibid. § 2. 76. The Mystic water board of said city shall have, exercise, and are hereby vested with, all the rights, privileges and authority, and be subject to all the provisions and restrictions as the commissioners named in section three of chapter one hundred and five of the acts of the year eighteen hundred and sixty-one [§ 58 of this digest].

Liability of city of Charlestown for damages. Ibid. § 3. 77. The said city shall be liable to pay all damages that shall be sustained by any persons in their property by the taking of any land, water, or water rights, or by the constructing of any aqueducts or other works for the purposes of this act; and any owner or party who shall sustain damages by the doings of said city under this act shall have the like remedy, and like proceedings shall be had, whether by the party sustaining damages as aforesaid, or by the said city of Charlestown, as is provided in said chapter one hundred and five of the acts of the year eighteen hundred and sixty-one.

Hydrants to be erected along 78. The said city of Charlestown shall erect proper hydrants in number equal to one for every five hundred feet of such new aque-

duct, and in any event to the number of twenty in the town of Somerville, along the line of said new aqueduct or elsewhere in the pipes connecting therewith, as the water committee of the town of Somerville and the selectmen of the town of Medford shall direct; and said towns of Somerville and Medford shall at all times maintain said hydrants, and draw water therefrom, without charge therefor, for the extinguishment of fires, under such regulations as the city of Charlestown may from time to time establish under authority of this act. And for this purpose there shall be allowed to said town of Somerville by the said city of Charlestown, in the settlement for water for hydrants under the contract now existing between said city of Charlestown and town of Somerville, the sum of twenty-eight dollars for each hydrant thus erected in said town.

79. The provisions of section twelve of chapter one hundred and five of the acts of the year eighteen hundred and sixty-one [§ 68 of this digest], and any by-laws or ordinances passed by said city in pursuance thereof, are hereby extended and made applicable to any and all the additional works constructed under the provisions of this act.

Provisions of 1861, c. 105, § 12, and by-laws, etc., made applicable to the additional works. Ibid. § 6.

DAM NEAR OUTLET OF HORN POND.

80: The city of Charlestown and the town of Woburn, or either of them, shall have power to erect and maintain a dam at or near the outlet of Horn pond, and raise the waters of that pond as high as the party erecting such dam may judge necessary for the purposes of this act, and in order to furnish a more permanent supply of water for the purposes set forth in chapter one hundred and five of the acts of the year eighteen hundred and sixty-one, and of the acts in addition thereto; the waters of said dam, however, not to exceed a level of six feet above the present high-water mark of said pond. All damages sustained by the erection of said dam are to be recovered against the town or city erecting said dam. The town of Woburn and the city of Charlestown are authorized to enter into any agreement, to divide between them, in such proportion as may be agreed upon, the cost of erecting and maintaining said dam and the damages occasioned thereby: *provided, however,* if said city of Charlestown and said town of Woburn enter into

Dam may be erected near outlet of Horn pond. 1871, c. 307, § 12

Damages.

Woburn and Charlestown may agree to divide cost of dam. Proviso.

1871, c. 307, § 12. such agreement, said damages may be recovered either against said city or said town, or against both of them, in such manner as is provided in this act [1871, c. 307], or in chapter one hundred and five of the acts of the year eighteen hundred and sixty-one [§§ 62, 63 of this digest], and in the several acts passed in addition thereto. And *provided, further*, that if such dam shall be wholly erected by said town, or said city, the town or city so erecting the same shall have the exclusive regulation of said dam and of the raising and lowering of the waters controlled thereby, and shall also be entitled to receive a reasonable compensation from the other town or city for any benefit derived or to be derived thereby; and in case they cannot agree as to the amount of such compensation, the same may be determined by a commissioner or commissioners to be appointed by the supreme judicial court sitting in equity, and their award may be rejected or accepted and enforced by said court.

WATER RIGHTS AND RESERVOIRS IN THE MYSTIC VALLEY.

City of Boston
may take water
from the valley
of the Mystic,
etc.
1874, c. 400, § 1.

81. The city of Boston is hereby authorized by and through the agency of the Boston water board, or by and through any other agency which shall be established therefor, to take, hold and convey to, into and through said city any or all the water belonging to the water-shed or valley of the Mystic, so called, not hitherto granted, or which flows or drains, directly or indirectly, into Mystic pond or Mystic river, and from time to time to establish and maintain reservoirs for the storage of any or all such waters, or any or all waters flowing into or lying in the Mystic pond or river which have not been otherwise granted; and for that purpose said city may take and hold, by purchase or otherwise, any water rights, lands and real estate necessary for building and maintaining said reservoirs, or for the erection of dams, buildings, water courses, aqueducts, machinery or appliances, with their accessories, for conducting, purifying, storing, elevating and distributing water; and may also take and hold any land on the margin of said sources of supply, not exceeding five rods in width from the high-water mark of said river, pond or storage reservoirs, so far as may be

necessary for the storage, preservation and purity of the same for ^{1874, c. 400, § 1.} the purpose of furnishing a supply of pure water to the city of Boston: *provided*, that the city of Somerville, and the towns of ^{Proviso.} Woburn, Stoneham, Winchester, Arlington, Medford and Malden, or either of them, having previously obtained authority to supply themselves with pure water, may take the waters of any natural basin or artificial reservoir belonging to the city of Boston, within the limits of said municipalities, in the manner and upon the terms to be agreed upon with said city of Boston; and in case of a failure to agree upon such manner and terms, either party may petition the supreme judicial court for the appointment of a commission of three suitable persons, who shall hear the parties, and determine the manner of taking said waters, and the compensation to be paid to the said city of Boston therefor, upon the basis of a proper and just apportionment of the expense of rendering the same available; and *provided, further*, that the said city of Boston shall not raise the waters of Horn pond more than six feet above the present mean high-water level, nor draw the same below the present level of low water; neither shall any lands south of Cross street, in the town of Winchester, be flowed to a greater extent than is at present authorized by law.

82. For the purposes of this act said city may, from time to time, erect and maintain dams, and may increase the height of and strengthen and maintain existing dams, to raise the water, or to form storage reservoirs; may make and maintain reservoirs within and without said city; may erect and maintain buildings and machinery for elevating the water, and lay down pipes for conducting the same; may build and maintain filters, conduits and sewers, or other means of purifying the water or of diverting impurities from the same.

May erect dams and increase height of and strengthen existing dams. Ibid. § 2.

And the said city may for the purposes aforesaid carry and conduct any conduit, aqueduct, water-main or other work by it to be made and constructed, under or over any water-course or any street, turnpike road, railroad, highway or other way, in such manner as not to unnecessarily obstruct or impede travel thereon; and may enter upon and dig up any such road, street or way for the purpose of laying down or constructing conduits, aqueducts, water mains or pipes, and for maintaining and repairing the same; and

1874, c. 400, § 2. in general may do any other acts and things necessary or convenient and proper for the purposes of this act.

Change of
grade, etc., of
Boston & Lowell
railroad.

Said city of Boston may also, with the consent of the directors of the Boston and Lowell railroad corporation, change the grade or location of so much of said railroad as is situated in the Mystic valley, or with the consent of the county commissioners of Middlesex county, or the surveyors of highways in the towns where such reservoirs are to be constructed, change the grade or location of any highway, public street or way of travel.

Said city of Boston, in entering upon and digging up any such highway, road, street or way of public travel, shall be subject to such reasonable regulations as shall be made by the selectmen of the towns wherein such work shall be performed, for the protection of their rights of drainage and sewerage therein; but any person or town using the conduits or sewers of said city, for the purpose of drainage, shall bear a proportional part of the expense of constructing and maintaining the same.

Liability for
damages.

Ibid. § 3.

100 Mass. 350.

See 1874, c. 338.

83. The city of Boston shall be liable to pay all damages that shall be sustained by any persons in their property, by the taking of or injury to any land, water or water rights, or by the flowage of the lands of any persons, or by the interference with or injury to any use or enjoyment of any of said water to which any person, at the time of such taking, is legally entitled, or by any other doings under this act; and in regard to such taking, injury, interference and flowage, and the ascertainment and payment of all such damages, the said city of Boston and all persons claiming damages shall have all the rights, immunities and remedies and be subject to all the duties, liabilities and regulations which are provided in the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six, and the three hundred and sixteenth chapter of the acts of the year eighteen hundred and fifty.

Streets and
ways to be re-
stored to as
good condition
as when digging
commenced.

Ibid. § 4.

84. Whenever the city of Boston shall dig up any street or way, as aforesaid, it shall restore the same in as good order and condition as the same shall be in when such digging commenced; and the city of Boston shall, at all times, indemnify and save harmless the several towns within which such street or way may be, against all damages which may be recovered against them respectively, and shall reimburse to them all expenses which they shall incur by

reason of any defect or want of repair in any street or way caused 1874, c. 400, § 4. by the construction of any of said works, or laying of said pipes, or by the maintaining or repairing the same: *provided*, that said city shall have due and reasonable notice of all claims for such damages or injury and opportunity to make a legal defence thereto.

85. If any person or persons shall wantonly or maliciously divert the water, or any part thereof, of any of the rivers, ponds, streams or water sources which shall be taken by the city pursuant to the provisions of this act, or shall corrupt the same, or render it impure, or destroy or injure any dam, aqueduct, pipes, conduit, hydrant, machinery or other property held, owned or used by the said city, by the authority and for the purposes of this act, every such person or persons shall forfeit and pay to the said city three times the amount of damages that shall be assessed therefor, to be recovered in any proper action. And every such person or persons may, moreover, on indictment and conviction of either of the wanton and malicious acts aforesaid, be punished by fine not exceeding one thousand dollars and imprisonment not exceeding one year, or by confinement to hard labor in the state prison for a term not exceeding ten years. Penalty for maliciously diverting water, or rendering the same impure. Ibid. § 5.

86. For the purpose of defraying all the costs and expenses incurred under this act, the said city of Boston is authorized to issue its bonds to such an amount as may be necessary therefor, but not exceeding the cost and expenses incurred under this act, bearing interest at the rate of six per centum per annum; and said interest shall be payable semi-annually, and the principal shall be payable at periods not more than forty years from the issuing thereof; and said bonds shall be known as Mystic water bonds of the city of Boston. And the said city may sell the same or any part thereof, from time to time, by public or private sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as it shall deem proper. Boston may issue bonds to defray expenses, etc. Ibid. § 6.

87. Nothing contained in the last preceding section shall be construed to prohibit the city of Boston from making temporary loans for the purposes therein set forth, to be redeemed within five years by the said Mystic water loan: *provided*, that the amount Not prohibited from making temporary loans. Ibid. § 7.

1874, c. 400, § 7. of said loan shall in no case exceed the amount authorized by said section.¹

SEWER IN MYSTIC VALLEY.

City of Boston
may construct
sewer in Mystic
valley.
1875, c. 202, § 1.

88. The city of Boston is hereby authorized, for the purpose of preserving the purity and remedying the pollution of the water supplied to said city from Mystic pond, so called, by virtue of chapter one hundred and five of the acts of the year eighteen hundred and sixty-one, and the acts in addition thereto, and amendment thereof, to construct for that purpose a main sewer, with as many branches as may be from time to time deemed necessary, in the Mystic valley and on the easterly side of the ponds and streams which discharge into said Mystic pond, commencing in the town of Woburn, running in a south-easterly direction through the town of Winchester into the town of Medford, and emptying into the lower Mystic pond at some convenient point near the upper end thereof.

Said city is authorized to extend or divert into said main sewer or any of its branches any streams or water courses, whether natural or artificial, flowing directly or indirectly into Mystic pond or its head-waters, or into any stream or pond connected with or discharging into said Mystic pond, which contain any sources of pollution.

May deepen
channels and
remove obstructions from
water courses.

Said city may also deepen the channel and remove obstructions from any such stream or water course, and may wall in and cover over the same. It may take or purchase such land as may be necessary for this purpose, not exceeding three rods in width on either side of such stream or water course, or of any channel into which it may conduct or divert the same.

Said city is likewise authorized to extend or divert into said main sewer or any of its branches any drain or sewer emptying directly or indirectly into Mystic pond, or into any stream or pond connected with or discharging into said Mystic pond.

Said city is likewise authorized to conduct or divert into said main sewer or any of its branches, any sewage, drainage or pollution of any kind caused by any town, corporation, person or per-

¹ Accepted by the city council of Boston (as required by the eighth section of the act), July 12, 1875.

sons, which now finds or shall hereinafter be in danger of finding 1875, c. 292, § 1.
its way directly or indirectly into said Mystic pond, or its head-
waters, or into any stream or pond connected with or discharging
into said Mystic pond.

Said city may, for the purposes aforesaid, erect such machinery, May erect ma-
chinery, pumps,
etc.
pumps and appliances of any kind which may be found necessary
from time to time.

89. The city of Boston may take and hold, by purchase or other- May take and
hold lands and
water rights.
Ibid. § 2.
wise, any lands, real estate, or water rights necessary for laying
and maintaining said main sewer and its branches, and for the
extension or diversion of any water courses, natural or artificial,
and of any drains or sewers which it may extend or divert, and for
the construction of any works which it may erect by virtue of the
provisions of this act.

It may construct said main sewer and its branches, and conduct,
extend or divert said water courses, sewers or drains over or under
any water course, or any streets, turnpike roads, railroads, high-
ways or other ways, and may enter upon and dig up such roads, May dig up
roads or ways.
streets or ways, for the purposes of construction, maintenance and
repair, and in such a manner as not to render the same unneces-
sarily inconvenient for public travel during the work thereon, and
in general may do other acts and things necessary and proper for
the purposes of this act.

Said city of Boston may also, with the consent of the directors May change
grades of roads,
etc.
of the Boston and Lowell railroad company, for the time being,
change the grade or location of so much of said railroad as is situ-
ated in the Mystic valley. It may also change the grade of any high-
way, public street, or way of travel, within the towns of Medford, Wo-
burn or Winchester, crossed by said sewer or any of its branches,
subject to such reasonable regulations as may be prescribed by the
selectmen of the town in which such highway or street is located.

90. Whenever said main sewer or its branches shall intercept Flow of water
in streams in-
tercepted by
sewers.
Ibid. § 3.
streams, drains, or sewers existing at the date of the passage of
this act, the said city of Boston shall connect the same with said
main sewer or its branches, or make such other provision as not to
destroy or unnecessarily injure the flow of the same.

91. Whenever the city of Boston shall dig up any street or way, To restore
streets to good
as aforesaid, it shall restore the same to as good order and condi-

order and condition.

City of Boston liable for damages, etc.

1875, c. 202, § 4.

100 Mass. 350.

tion as the same shall be in when such digging commenced; and the city of Boston shall at all times indemnify and save harmless the town of Woburn, the town of Winchester, and the town of Medford, against all damage which may be recovered against them, respectively, and shall reimburse to them, respectively, all expenses which they shall incur by reason of any defect or want of repair in any street or way, caused by the construction of said main sewer or any of its branches, or the extension or diversion of said water-courses, sewers or drains, or by the maintaining or repairing of the same: *provided*, that said city shall have due and reasonable notice of all claims for such damages or injury, and opportunity to make a legal defence thereto.

Sewer to be substantially made and kept in order by Boston.
Ibid. § 5.

92. The main sewer and its branches, to be constructed under this act, shall be the property of the city of Boston; shall be substantially made with brick and stone, or with such other materials and in such manner as the board of aldermen of the city of Boston shall permit or direct, and shall be kept and maintained in good order by the city of Boston.

Expense of repairs to be assessed upon persons benefited.

The city of Boston shall at all times have the right to repair the same, and to remove stoppages therefrom, and may assess the expense, or any portion thereof, on all persons benefited by such repairs, or removal of obstructions, in the manner designated in the eleventh and twelfth sections of chapter forty-eight of the General Statutes of the commonwealth, and the board of aldermen of the city of Boston shall have the powers therein granted to selectmen of towns; but no part of such expense shall be assessed upon towns, corporations or persons who do not use said main sewer or its branches, or who are lawfully entitled to discharge their sewage or drainage into said Mystic pond or its head-waters at the date of the passage of this act. All juries applied for under this section shall be drawn from the county of Middlesex.

Liability for damages.
Ibid. § 6.

93. The city of Boston shall be liable to pay all damages that shall be sustained by any person, town or corporation in his or its property by the taking of or injury to any land, real estate, water or water-rights, or by the interference with or injury to the use of any water-course to which such person, town or corporation is legally entitled at the time of such taking; and in regard to such taking, injury, or interference, and the ascertainment and payment

of all such damages, the said city of Boston, and all persons, towns or corporations claiming damages, shall have all the rights, immunities and remedies, and be subject to all the duties, liabilities and regulations, which are provided in the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six, the one hundred and eighty-seventh chapter of the acts of the year eighteen hundred and forty-nine, and the three hundred and sixteenth chapter of the acts of the year eighteen hundred and fifty.

94. No corporation, person or persons, shall hereafter discharge any sewage, drainage or pollution, of any kind, which they have not the legal right so to discharge at the date of the passage of this act, and no city or town shall discharge its public drainage or sewage into the said upper Mystic pond, or any head-water, pond or stream running into, or connected therewith, or into the said main sewer or any of its branches, or into any drain or sewer directly or indirectly connected therewith, or into any stream or water course diverted into said main sewer, or into the branches thereof, or into any drain, sewer or conduit emptying into said stream or water course or its branches, without the permission of the city of Boston; but any such town, corporation, person or persons may, with the permission of the city of Boston, enter a drain or sewer into such main sewer or any of its branches, upon giving six months' notice to said city of Boston of their desire so to do, and upon payment of a reasonable compensation to said city for the use of the same.

Drainage of other towns, etc., not to enter main sewer without consent of Boston. Ibid. § 7.

If the city of Boston and said town, corporation, person or persons shall be unable to agree upon said compensation, either party may petition the supreme judicial court for the appointment of a commission of three suitable persons, who shall hear the parties and determine the compensation to be paid to the city of Boston. Such compensation may consist of a sum in gross, or of a yearly payment to be made to said city, as said commissioners may decide; and the report of said commissioners, or of a majority of them, being subject to the revision of, and being accepted by the supreme judicial court, shall be final, and judgment shall issue thereon.

Compensation for use of sewer by other towns.

The entry of any drain or sewer into said main sewer, or any of its branches, shall be made under the direction of the city of

1875, c. 202, § 7. Boston, and subject to such reasonable rules and regulations as may be made by the city council thereof.

Upon the establishment by the towns of Woburn, or Winchester or Medford of any system of sewerage or drainage, the sewers established by said towns to the northward and eastward of said system of sewers of the city of Boston, and through territory which naturally drains toward said main sewer of the city of Boston, or any of its branches, shall be entered into said sewers of said city of Boston, and compensation therefor shall be made severally by said towns to said city of Boston, and shall be determined, if the parties shall be unable to agree, in the manner hereinbefore set forth: *provided*, in all cases under this section no such town, corporation, person or persons shall be entitled to make such entry except by permission of the city of Boston, or upon such terms as shall be determined by the supreme judicial court.

Rights of Woburn and Winchester not to be impaired.
Ibid. § 8.

95. Nothing in this act shall be so construed as to impair the rights heretofore granted to the towns of Woburn and Winchester for supplying themselves with pure water; or to prohibit the saving and use of sewage and drainage matter for fertilizing purposes, or making any local disposition of the same, which shall not pollute the waters of said upper Mystic pond.

Penalty for polluting water of Mystic pond.
Ibid. § 9.

96. If any town, corporation, person or persons shall wantonly or maliciously discharge any sewage, drainage or cause of pollution into the said upper Mystic pond or any head-water, pond or stream running into or connected therewith, such town, corporation, person or persons shall be liable to the penalties declared in the fifteenth section of the one hundred and sixty-seventh chapter of the acts of the year eighteen hundred and forty-six [§ 19 of this digest].

Penalty for unlawfully entering drain.
Ibid. § 10.

97. If any town, corporation, person or persons shall, contrary to the provisions of this act, enter any drain or sewer, or conduct any sewage or drainage matter, or pollution of any kind, into any drain or sewer constructed by the city of Boston by virtue of this act, or into any water-course, stream or channel, natural or artificial, connected therewith; or shall wantonly or maliciously injure or destroy, or divert or obstruct any such drain or sewer, or destroy or injure any machinery or property held, owned or used by the said city, by the authority and for the purposes of this act; such town, corporation, person or persons, shall

forfeit and pay to said city of Boston, three times the amount of 1875, c. 202, § 10. the damages that shall be assessed therefor, to be recovered in any proper action.

98. It shall be lawful for the supreme judicial court, upon application of the city of Boston, to grant an injunction against any unlawful use of or interference by any one with any sewers or drains constructed by the city of Boston under this act, or against the unlawful entry of any drain or sewer, directly or indirectly, into the same, or into any drain, sewer, or water course connected therewith, or against the unlawful pollution or corruption of the upper Mystic pond, or its head-waters, or of any pond or stream flowing into or connected with the same; and damages therefor may be assessed by said court, as incident to such process.

Injunction may be granted by S. J. C. Ibid. § 11.

99. This act shall not be construed to grant an interminable right to discharge sewage into Mystic lower pond, but the legislature may, from time to time, by law regulate and determine the disposition to be made of said sewage for the purpose of protecting the public health, and especially that of the inhabitants of Arlington and Medford, and preventing the existence of a nuisance, anything to the contrary in this act notwithstanding.

Legislature may regulate disposition of sewage from time to time. Ibid. § 12.

100. For the purpose of defraying all the costs and expenses incurred under this act, the said city of Boston is authorized to issue its bonds to such an amount as may be necessary therefor, but not exceeding the costs and expenses incurred under this act, bearing interest at the rate of six per centum per annum; and said interest shall be payable semi-annually, and the principal shall be payable at periods not more than forty years from the issuing thereof; and said bonds shall be known as the Mystic sewer bonds of the city of Boston. And the said city may sell the same, or any part thereof, from time to time, by public or private sale, or pledge the same for money borrowed for the purposes aforesaid, on such terms and conditions as it shall deem proper.¹

Mystic sewer bonds of the city of Boston may be issued. Ibid. § 13.

¹ Accepted by the city council of Boston (as required by the fourteenth section of the act), July 12, 1875.

BOSTON WATER BOARD.

Boston water
board estab-
lished.
1875, c. 80, § 1.

101. The city council of the city of Boston may establish, by ordinance, a water board, to be known as the Boston water board, consisting of three able and discreet persons, to be appointed by the mayor, with the advice and consent of the city council, and to receive such compensation as the city council may from time to time determine. The said board may be empowered by said city council to exercise all or any of the powers conferred by the statutes of the commonwealth upon the city of Boston, with reference to supplying said city with water, or of the Cochituate and Mystic water boards; and also to act as the agent of the city of Boston in doing any or all things which the city is now authorized to do in relation to the taking of lands, water rights and other property, and the establishment and maintenance of works and appliances for supplying the city of Boston or other cities and towns with pure water. Said board may also establish and regulate the price or rents for the use of said water, subject to the provisions of sections twelve and thirteen of chapter one hundred and sixty-seven of the acts of the year eighteen hundred and forty-six; and the words "Boston water scrip" in said sections shall be construed to include the whole amount of outstanding loans representing the cost of the water works.

Cochituate and
Mystic water
boards to be
abolished.
Ibid. § 2.

102. The Cochituate water board and the Mystic water board shall, upon the appointment of the Boston water board, as provided in the preceding section, be thereby abolished; and the said Boston water board shall, so far as the city council of said city may by ordinance prescribe, succeed to all the powers and duties formerly vested in said Cochituate water board and Mystic water board.

Salaries not to
be diminished
during terms for
which appoint-
ed.
Ibid. § 3.

103. The salaries of the members of the Boston water board shall not be diminished during the terms for which they are respectively appointed.

SUPPLY FROM PONDS IN NORFOLK COUNTY.

City authorized
to take water
from ponds in

104. By an act passed June first, eighteen hundred and sixty-seven, the city of Roxbury was authorized to contract with either the

city of Boston or the city of Charlestown for a supply of water, and to take, by purchase or otherwise, and hold such land, real estate or water rights, and erect and maintain such works and structures as may be necessary for the introduction of water either from said city of Boston, or from said city of Charlestown, *or from any ponds or other sources of supply within the limits of the county of Norfolk, except Jamaica pond*, and the distribution thereof in said city of Roxbury. It was also provided in the act that if, within three years from its passage, the territory of the city of Roxbury should be annexed to the city of Boston, then the city of Boston should succeed to all the rights and privileges therein granted to the city of Roxbury. In accordance with the seventeenth section, the provisions of the act were submitted to the voters of Roxbury, and approved by them, November fifth, eighteen hundred and sixty-seven.

Norfolk county.
1867, c. 343,
§§ 1, 15, 17, 18.

BROOKLINE AUTHORIZED TO SUPPLY WATER TO BOSTON.

105. The town of Brookline may from its source of supply, or from pipes leading therefrom, sell to the city of Boston such quantity of water, for such time and on such terms as may be agreed on between said city and said town: *provided*, that said city shall first signify its desire to purchase such water by a vote of its common council and board of aldermen, approved by the mayor of said city; and that said town shall first signify its desire to sell the same by a vote of its inhabitants at a meeting duly warned for that purpose.

Brookline may
sell water to
Boston.
1875, c. 127, § 1.
Proviso.

106. The city of Boston by its common council, and the town of Brookline at any meeting of its inhabitants, may each authorize any person to execute in its behalf a suitable contract for carrying into effect any votes passed under the preceding section.

Contract may be
executed to
carry votes into
effect.
Ibid. § 2.

GENERAL AUTHORITY TO PURCHASE WATER RIGHTS.

107. Any city or town in this commonwealth may, for the purpose of supplying pure water to its inhabitants, purchase of any aqueduct company, or of any municipal or other corporation, now existing, or that may hereafter be organized under any special charter or general law of this commonwealth, the right to take

Cities, etc., may
purchase right
to supply pure
water to its in-
habitants.
1870, c. 93, § 1.

1870, c 93, § 1. water from any of its sources of supply or from pipes leading therefrom; or may purchase its whole water rights, estates, properties franchises and privileges, and by such latter purchase become entitled to all the rights and privileges and subject to all the duties and liabilities appertaining and belonging to said company or corporation: *provided, however*, that no city shall exercise such authority to purchase without the consent of two-thirds of each branch of its city council, sanctioned and ratified by a majority of the voters of said city, present and voting thereon at a legal meeting duly called in their several ward-rooms for that purpose, and at which the check-list shall be used; and *provided, further*, that no town shall exercise such authority to purchase without the consent of a majority of its selectmen, sanctioned and ratified by a majority of the voters of said town, present and voting thereon at a legal meeting duly called for that purpose, and at which the check-list shall be used.

May issue bonds in payment, redeemable in twenty years.
Ibid. § 2.

108. Any city or town which shall make such purchase may issue bonds in payment thereof, at a rate of interest not exceeding seven per cent., payable semi-annually, and redeemable at some time not exceeding twenty years from the date thereof.

May issue additional bonds for laying pipes, etc.
Ibid. § 3.

109. Any city or town which shall make such purchase and issue bonds as aforesaid, may, for the purpose of purchasing materials, laying pipes, and doing other work necessary in order to supply its inhabitants with pure water for domestic uses, or for extinguishment of fires, issue additional bonds similar to those heretofore specified: *provided*, the whole amount issued under this and the preceding sections does not exceed ten per cent. of its valuation.

Proviso.

Pipes carried through another town, etc., to be laid under direction of selectmen, etc.
Liability for damages.
Ibid. § 4.

110. In case the water should be brought through another city or town, pipes may be laid through such streets and highways of said city or town as shall be designated by the mayor and aldermen, or selectmen thereof; and the party exercising the privilege of laying pipes under such permission, shall be liable, in an action of contract or tort, for all damages to any party damaged thereby.

Purchase-money to be applied to payment of water debt.
Ibid. § 5.

111. All purchase-money received by any city or town under or by authority of the provisions of this act shall be applied to the payment of its water debt; or, if no such debt exists, then into the general treasury of such city or town.

TO REGULATE WATER-FIXTURES, ETC.

112. The city council of any city and the inhabitants of any town, in which water is supplied or distributed at the public expense, may prescribe rules and regulations for the inspection, materials, construction, alteration, or use of all water-pipes and water-fixtures of every kind, through which water so supplied or distributed is used by any person or corporation within said city or town, and may impose penalties not exceeding twenty dollars for each and every violation of any provision of any ordinance or by-law passed by authority of this act, to be recovered before any municipal, district, or police court, or any trial justice having jurisdiction in the place where the penalty is incurred; and may prohibit the use of water by any person or corporation neglecting or refusing to comply with any provision of any ordinance or by-law so passed; and any ordinance or by-law so passed may be made operative upon and within the whole territory of such city or town, or upon and within any prescribed or defined district or districts of said territory.

Cities and towns may regulate construction of water-pipes and water-fixtures. 1875, c. 105, § 1.

113. The powers conferred by this act upon the city council of any city or the inhabitants of any town, except the power to impose penalties, may be exercised by them through any water board or other board or commission which they may designate; but the powers so delegated to any such board or commission may at any time be revoked by the authority delegating them.

Powers may be exercised by water board. Ibid. § 2.

TO REGULATE USE OF RESERVOIRS AND LANDS APPURTENANT.

114. Any city or town may regulate by suitable ordinances or by-laws, to be made in the manner now provided by law, with penalties not exceeding fifty dollars for each violation thereof, the use of reservoirs and land and driveways appurtenant thereto, forming a part of its system of water supply within its limits.

Use of driveways, etc., appurtenant to reservoirs, may be regulated. 1876, c. 139.

TO ESTABLISH DRINKING-TROUGHS, ETC.

115. The selectmen of the various towns may establish and maintain such public drinking-troughs, wells, and fountains within the public highways, squares and commons of their respective

Public drinking-troughs and fountains may be established

by selectmen,
and towns may
raise money to
pay for same.
1872, c. 84.

towns, as in their judgment the public necessity and convenience may require; and the several towns are hereby authorized to raise and appropriate such sums of money as shall be necessary to defray the expense thereof.

TO LEASE PONDS, FOR CULTIVATION OF FISHES.

Commissioners
to give notice to
towns where
ponds lie of ap-
plications to
lease great
ponds.

1873, c. 195, § 1.

1869, c. 384, § 9.

1870, c. 360.

Towns may take
leases of ponds
in their limits.

1873, c. 195, § 2.

1869, c. 384, § 13.

116. It shall be the duty of the commissioners on inland fisheries, in all cases where application is made for the lease of any great pond, exceeding twenty acres in extent, for the purpose of cultivating useful fishes, to give notice of said application to the town or city within whose limits said pond lies, and of the time and place appointed for a hearing thereon.

117. The several towns and cities in the commonwealth are authorized to take leases of any great ponds within their respective limits, for the purpose of cultivating useful fishes, under such conditions and restrictions as the commissioners on inland fisheries may prescribe, and may make appropriations to carry out the provisions of this act.

ORDINANCES.¹

Appointment of
Boston water
board.
March 22, 1876.

SECTION 1. In the month of April in the year eighteen hundred and seventy-six, or as soon thereafter as may be, the mayor shall appoint, subject to the approval of the city council, by vote taken by ballot in each branch thereof by yea and nay, three persons to constitute the Boston water board. One member of said board shall be appointed to hold his office until the first Monday in May in the year eighteen hundred and seventy-seven; one until the first Monday in May in the year eighteen hundred and seventy-eight; and one until the first Monday

¹ An ordinance to establish the Boston water board, passed March 22, 1876.

Also portions of an ordinance providing for the care and management of the Boston water works, passed Sept. 7, 1869, and amended Dec. 10, 1869, July 16, 1870, and Nov. 3, 1874.

in May in the year eighteen hundred and seventy-^{March 22, 1876.} nine. In the month of April in the year eighteen hundred and seventy-seven, and annually thereafter in the month of April, the mayor shall appoint, subject to like approval, one person to be a member of said board for the term of three years from the first Monday in the following May. Any member of said ^{Removal.} board may at any time be removed by the mayor, with the consent of the city council, or he may be removed by vote of two-thirds of the whole of each branch of the city council by vote taken by yea and nay. All ^{Vacancies.} vacancies occurring in said board shall be filled, for the unexpired term, in the same manner in which the original appointments are herein directed to be made.

SECT. 2. The said board, when first appointed, ^{Organization of board.} shall meet and organize forthwith by the choice of ^{Ibid.} one of its members as chairman; and annually afterwards, on the first Monday in May, the said board shall organize in like manner. The members of said board shall devote their time to the duties of their office, and shall not actively engage in any other business. They shall receive such compensation for their services as the city council may from time to time determine. They shall choose a clerk, who ^{Clerk.} shall not be a member of the board, shall fix his compensation, and may remove him at pleasure; and they shall make such rules and regulations as they may ^{Rules and regu. lations.} deem expedient for their own government and for the government of all subordinate officers appointed by them. They shall preserve complete records of their ^{Records} meetings, giving the names of the members present,

March 22, 1876. and their votes and doings thereat; and they shall, whenever requested, exhibit to the mayor or to any member of the city council said records, and also any and all books, papers, and documents belonging to that department.

Powers and duties of board.
Ibid.

SECT. 3. The said board, as hereby constituted, shall have and exercise all the powers, so far as the same can be legally delegated by the city council, which are granted to the city of Boston by chapter one hundred and sixty-seven of the acts of the year eighteen hundred and forty-six, entitled "An act for supplying the city of Boston with pure water," and by any acts in addition thereto; also all the powers granted to the city of Boston by chapter one hundred and seventy-seven of the acts of the year eighteen hundred and seventy-two, entitled "An act to authorize the city of Boston to obtain an additional supply of pure water;" also all the powers now held by the city of Boston under the provisions of chapter one hundred and five of the acts of the year eighteen hundred and sixty-one, entitled "An act to supply the city of Charlestown with pure water," and any acts in addition thereto;¹ subject, however, to the authority of the city council from time to time by ordinances, orders, or resolutions to instruct said board, and to change and limit its powers; and said board shall have power to appoint such subordinate officers, agents and assistants, in addition to the engineer and water registrar elected by the city council,

Appo ntment of subordinates.

¹ The statute authorizing the establishment of the Boston water board gives the board power, when established, to fix the price or rents for the use of water.

as it may deem necessary, and may fix their compensation: *provided* that the expenditures incurred by it shall not exceed in the aggregate the sums previously appropriated or authorized by the city council for the care, maintenance, repair, or enlargement of the water works. March 22, 1876.

SECT. 4. The account of expenses and revenue of the Mystic water works shall be kept separate and distinct from the other accounts of the water department; and the excess, if any, of such revenue over expenditure and interest on loans shall be paid to the sinking-fund commissioners for the redemption of any loans heretofore made or hereafter to be made on account of said works. All existing contracts for the supply of water from said works to other cities and towns shall continue in force, and shall not be modified or annulled except by an order of the Boston water board, approved by a vote of the city council. Accounts, how kept. Ibid.
Sinking fund of Mystic works.
Existing contracts to continue in force, etc.

SECT. 5. The city engineer shall be the engineer of the Boston water board, and shall, under the direction of said board, have the general superintendence of all works in the water department. Engineer of department. Ibid

SECT. 6. No contract or purchase which shall be estimated to involve an expenditure of more than ten thousand dollars shall be made by the said board, unless it shall first advertise for sealed proposals therefor. Whenever advertisements for proposals are made, plans and specifications of the work to be When expenditure exceeds \$10,000, board to advertise for proposals. Ibid.

March 22, 1876. done, and schedules of the materials or supplies to be furnished, shall be placed on file in such office as may be designated by said board, and shall at all times during office hours be open to public inspection. The advertisements shall in all cases be inserted not less than five times in each of three newspapers published in the city of Boston, and they may be inserted also in newspapers of other cities or towns, if said board shall deem it expedient, and the last publication of any advertisement shall be at least one week before the time fixed for opening the proposals. Each proposal shall conform to the specifications and requirements of the advertisement, and shall be enclosed in a sealed envelope directed to said board. It shall be accompanied by a bond to the city, with sufficient sureties, in such sum, not less than five hundred dollars, as said board may specify in its advertisement, and conditioned to be void if the party making the proposal shall, in case of the acceptance of his bid, sign and deliver to said board, within the time required in the advertisement, a contract for the performance of the subject-matter of his proposal, and if he shall also, at the time of the delivery of such contract, give a further bond, with satisfactory sureties, for the performance of such contract.

Bonds for per-
formance of con-
tracts.

Instead of the before-mentioned bond to accompany a proposal, a deposit of money or other collateral, satisfactory to said board, may be made as security for the signing and delivery of the contract and of the bond for the performance thereof. For the performance of any contract, a bond with sureties shall in all cases be required when the contract is signed and delivered.

All proposals shall be publicly opened at the hour and place designated in the advertisement. March 22, 1876.
Opening proposals.

The provisions of this section shall not be construed to prevent said board from rejecting any or all bids which may be offered under its advertisements; and it shall be the duty of said board to reject all bids of irresponsible parties. Bids may be rejected.

SECT. 7. The said board shall annually, on or before the 15th day of February, send to the joint standing committee of the city council on the water department an estimate in detail of the appropriations required by its department during the financial year next ensuing, and also an estimate of the income to be derived during such year from water rents and from other sources. All bills for expenditures from the appropriations for the water department shall, before they are paid by the treasurer, be drawn for by said board, examined by the auditor of accounts, and approved by the committee on accounts. Estimates of expenditure to be prepared.
Ibid.

SECT. 8. The said board shall annually, in the month of May, present to the city council a report, made up to and including the thirtieth day of the preceding April, and containing a full and comprehensive statement of the acts of said board during the preceding year, and of the condition of the water works at the time of the report, together with such other information or suggestions as said board may deem proper; and it shall at the same time transmit to the city council reports from the city engineer and from the water registrar. Annual report.
Ibid.

Committee on
water depart-
ment.
March 22, 1876.

SECT. 9. There shall be appointed annually, in the month of January, a joint committee of the city council on the water department, consisting of two members of the board of aldermen, and three members of the common council. It shall be the duty of said committee to examine, as often as once in each month, the records, accounts, and contracts of the Boston water board, and all requests for appropriations for said department shall be examined and reported upon by the said committee before they are acted upon by the city council.

Boston
water board
may sell or
lease property,
etc.
Sept. 7, 1869.

SECT. 10. The Boston water board are authorized to sell or lease such of the property connected with the water works as they may deem expedient, subject to the approval of the mayor; and all necessary deeds and leases shall be executed by the mayor, and countersigned by the president of the board.

Pay-rolls of
clerks, etc., to
be made up
under direction
of board and
paid by treas-
urer.
July 16, 1870.

SECT. 11. The pay-rolls of all the clerks, inspectors and laborers in the water department shall be made up under the direction of the Boston water board and certified by the president; and upon being duly admitted and allowed, they shall be paid by the city treasurer, at such times and places as he shall appoint, and by the agency of such of his clerks as he may delegate for that purpose.

To make an an-
nual report.
Sept. 7, 1869.

SECT. 12 The city engineer, on or before the fifth day of May, annually, shall present to the Boston water board a detailed statement of all expen-

ditures in his department relating to the same, and such other matters as he, or the said board, may deem expedient. Sect. 7, 1869.

SECT. 13. There shall be elected annually, on the first Monday of February, or within sixty days thereafter, by concurrent vote of the two branches of the city council, a water registrar, who shall be a citizen of Boston. He shall hold his office for one year from the first Monday in April of the year in which he is elected, and until a successor is elected and qualified, or he is removed. He may be removed by the city council, and they may fill any vacancy at any time for an unexpired term. Water registrar, how chosen, etc. Ibid.

SECT. 14. The water registrar, under the direction and control of the Boston water board, shall assess the water rates according to the tariff established by said board. He shall, once in each year, personally visit, or cause to be visited, the premises of every person who takes water, and shall make out and distribute all bills for the same; and he shall exercise a constant supervision over the use of the water, and attend to the enforcement of all regulations relative thereto. To assess water rates. Ibid. To visit premises of takers, make out bills, etc.

SECT. 15. The water registrar, on or before the fifteenth day of April, annually, shall present to the Boston water board a report, containing a statement of the number of water-takers, the number of cases where the water has been cut off, the number and To make annual report. Ibid.

Sept. 7, 1869.

amount of abatements, the expenditures in his department, and such other matters as he, or the said board, may deem expedient.

Water rent payable in advance on the first day of January.
Ibid.

SECT. 16. The annual rent for the use of the water shall be payable to the city collector in advance, on the first day of January in each year. All charges for specific supplies, or for fractional parts of the year, shall be payable in advance, and before the water is let on.

Supply to be cut off in case of non-payment.
Ibid.

SECT. 17. In all cases of non-payment of the water rent for sixty days after the same is due, the water registrar shall serve a summons at the premises of such delinquent; and unless said rent is paid within three days thereafter, together with twenty-five cents for said summons, the water registrar shall cut off the supply; and the water shall not be let on until the amount due, together with the twenty-five cents for said summons, and two dollars for the shutting off and letting on, is paid; *provided*, that no occupant shall be required to pay the amount due from a former occupant; and *provided, also*, that in cases of specific supplies, or when the water has been let on for fractional parts of the year, the summons may be served, and the water cut off immediately; and it shall not be let on again except upon the conditions before mentioned. The foregoing provisions shall apply when two or more parties take water through the same service-pipes, although one or more may have paid the proportion due from him or them.

SECT. 18. The water registrar, under the control of the Boston water board, may make abatements in the water rents, in all proper cases.

Abatements
may be made.
Sept. 7, 1869.

SECT. 19. The water registrar shall keep suitable books, in which shall be entered the names of all persons who take the water, the kind of building, the name and number of the street, the nature of the use, the number of taps, and the amount charged, which books shall be always open to the inspection of the Boston water board and any committee of the city council. He shall perform such other services as may be required of him by the city council, or the Boston water board.

Water registrar
to keep books,
etc.
Ibid.

SECT. 20. No member of the Boston water board, and no person appointed to any office, or employed by virtue of this ordinance, or by the acts of the legislature, shall be interested directly or indirectly, in any contract, bargain, sale, or agreement, in relation to the water works, or any matter or thing connected therewith, wherein the city is interested, without an express vote of the city council; and any and all contracts, bargains, sales, or agreements, made in violation of this section, shall be utterly void as to the city.

No member of
the board, or
officer, to be in-
terested in any
contract, etc., in
relation to the
water works.
Ibid.

SECT. 21. If any person shall open any hydrant within the city of Boston, or lift or remove the cover of the same, without the license of the Boston water board, or of the city engineers or the water registrar, except in case of fire, he shall be liable to a penalty

Penalty for
opening hy-
drants, etc.
Ibid.

Sept. 7, 1869.

of not less than three dollars, nor more than fifty dollars.

For opening any
pipe or reser-
voir, etc.
Ibid.

SECT. 22. If any person shall make any opening or connection with any pipe or reservoir, without the license mentioned in the preceding section, he shall be liable to a penalty of not less three dollars, nor more than fifty dollars.

For turning on
or turning off the
water, etc.
Ibid.

SECT. 23. If any person shall turn on, or turn off, the water in any of the water-pipes or reservoirs, without the license mentioned in the twenty-first section, he shall be liable to a penalty of not less than three dollars, nor more than fifty dollars.

For injuring any
reservoir, etc.
Ibid.

SECT. 24. Any person who shall injure any public reservoir, or who shall break and enter the same, and draw off, or cause to be removed, any of the water therefrom, except in case of fire, or by authority of the board of aldermen, or Boston water board, shall forfeit and pay a sum not less than one dollar, nor more than fifty dollars.

Water not to be
sold to parties
out of the city,
unless, etc.
Ibid.

SECT. 25. The water shall not be sold or delivered to any parties out of the limits of the city, unless by special vote of the Boston water board.

Regulations
under which the
water shall
be taken.
Ibid.

SECT. 26. The following regulations shall be considered a part of the contract with every person who takes the water; and every such person, by taking the water, shall be considered to express his assent to be bound thereby. They shall be printed upon every

bill for water rent; and whenever any one of them is violated, the water shall be cut off from the building or place where such violation occurred, although two or more parties may receive the water through the same pipe, and shall not be let on again, except by the order of the Boston water board, and on the payment of two dollars; and, in case of any such violation, the said board shall have the right to declare any payment made for the water, by the person committing such violation, to be forfeited, and the same shall thereupon be forfeited. Sept. 7, 1869.

The said regulations are as follows: —

One. All persons taking the water shall keep the service-pipes within their premises, including any area beneath the sidewalk, in good repair, and protected from frost, at their own expense; and they will be held liable for all damage which may result from their failure to do so. Takers to keep service pipes in good repair. Ibid.

Two. They shall prevent all unnecessary waste of water, and shall not conceal the purposes for which it is used. To prevent waste, and use no concealment.

Three. No alteration shall be made in any of the pipes or fixtures inserted by the city, except by persons authorized by the Boston water board, who are to be allowed to enter the premises supplied, to examine the apparatus, the quantity of water used, and manner of its use, and to ascertain whether there is any unnecessary waste. No alteration to be made, except, etc.

Four. No water is allowed to be supplied to parties not entitled to the use of it under the city ordinances, unless by special permission. Water not to be supplied to other parties, unless, etc.

Five. The use of the hand-hose is restricted to Use of hand-hose restricted.

Sept. 7, 1869.

one hour before eight of the clock in the forenoon, and one hour after sunset.

Water registrar
may enter prem-
ises to examine.

Six. The water registrar may enter the premises of any water-taker, to examine the quantity of water used, and the manner of its use.

Water fixtures
to be approved.
Nov. 3, 1874.

Seven. All distributing pipes and water-fixtures introduced into the premises of any water-taker shall be subject to approval by the Boston water board, or their duly appointed agents; and no change affecting the flow of the water shall be made in the service pipes or water-fixtures already introduced, unless approved by the said water board, or their duly appointed agents.

City council may
alter foregoing
regulations.
Ibid.

Nothing in this section contained shall be construed to prevent the city council from altering the foregoing regulations from time to time in its discretion.

Waste of water,
fine and penalty
for.
Sept. 7, 1869.

SECT. 27. The owner and occupant of any premises in which water furnished by the city is used, who fails to keep the service pipes and fixtures in good order, and neglects to repair the same within three days after they have become defective from any cause, shall be liable to a fine of two dollars; and, in case of neglect to shut off the water after using it so that it runs to waste, said owner or occupant shall also be liable to a fine of two dollars; and, if the fine aforesaid is not paid within two days from the time when said notice is given, the water shall be cut off from the said premises, and shall not be let on again until the waste be stopped and the fine paid, together with an additional sum of

two dollars for cutting off and letting on the water; Sept. 7, 1889.
 and, in case of a second offence during the same year, a fine of four dollars shall be imposed, and, if not paid as before mentioned, the water shall be cut off and shall not be let on again until the cause of complaint is removed, and the fine paid, together with two dollars for cutting off and letting on the water; and, in case of a third or subsequent offence, the water shall be cut off, and shall not be let on again except by a vote of the Boston water board, and the payment of such fine, not exceeding ten dollars, as the said board may impose.

SECT. 28. No hose shall be attached or used in any stable for washing horses or carriages, or for any other purpose whatsoever, except for extinguishing fires, under a penalty of ten dollars for each offence; and, if this penalty is incurred and is not paid within two days after demand for the same made at such stable, the water shall be cut off from such stable, and shall not be let on again until said penalty is paid, and also the additional sum of two dollars for cutting off and letting on the water. Hose not to be used for washing horses, carriages, etc., fine and penalty for. Ibid.

SECT. 29. Whenever two or more dwelling-houses, or other estates, are valued together for the assessment of taxes, the water registrar, under the direction of the Boston water board, shall make a separate valuation of the same; and whenever a portion only of any estate is justly chargeable for any water rate, the water registrar shall make a proper valuation of the said portion; and the water rates For estates valued together. Ibid.

Sept. 7, 1869. hereinbefore provided shall apply to such valuations respectively.

For railroads,
hotels, and
manufacturing
establishments.
July 16, 1870.
1 Allen, 361.

SECT. 30. The Boston water board shall have power to ascertain, by meters, the quantity of water used in any case; and the proprietors or occupants of hotels, taverns, boarding-houses, or any other establishment using large quantities of water, shall also have authority to place within their premises, at their own expense, a sufficient water meter, to be approved by the water registrar, for the purpose of measuring the quantity of water by them respectively used. The charge for the use of water by meter to be collected quarterly by the water registrar; and all such bills shall be paid within ten days thereafter, or the water registrar shall cut off the supply, after sending a summons, as provided in section seventeen.

Pipes not to be
laid in un-
accepted streets,
unless properly
graded.
Sept. 7, 1869.

SECT. 31. Whenever application is made to the Boston water board by parties who have built, or may intend to build, upon unaccepted streets, for an extension of the water pipes, or the use of water from pipes already laid, the said board shall refuse such application, unless, upon an examination of the premises by the city engineer, it is found that the street is properly graded, to a level of at least eighteen feet above mean low water, and that the cellars and yards are filled with material, satisfactory to said board, to a level of at least twelve feet above mean low water.

CHESTNUT-HILL RESERVOIR AND ADJOINING GROUNDS.¹

SECTION 1. No person shall fish in the Chestnut-hill reservoir, or discharge any gun or firearm on the same or on the grounds connected therewith.

Fishing and
gunning for-
bidden.
May 30, 1876.

SECT. 2. No person shall bathe in the Chestnut-hill reservoir, or place or use any boat therein, or throw any dirt, rubbish, filth or offensive matter, or commit any nuisance therein.

Bathing, boat-
ing, etc., forbid-
den.
Ibid.

SECT. 3. No person shall drive any team, cart, wagon, or other vehicle for the conveyance of burdens, upon the driveway, or within the grounds of the Chestnut-hill reservoir.

Driveway not to
be used by
heavy teams.
Ibid.

SECT. 4. No person shall drive or conduct any funeral, or any hearse or carriage connected with a funeral, on the driveway of the Chestnut-hill reservoir.

Funeral pro-
cessions not to
be driven on.
Ibid.

SECT. 5. No owner or other person having for the time being the charge or use of any horse, or other animal, shall drive or permit such horse or animal to go at a greater rate of speed than eight miles an hour upon the driveway, or within the enclosure of Chestnut-hill reservoir.

Rate of speed
regulated.
Ibid.

SECT. 6. No person shall injure, deface or destroy any tree, shrub, grass, path or fence on the grounds

Fences,
grounds, etc.,

¹ An ordinance for the regulation of Chestnut-hill reservoir and the grounds connected therewith, passed May 30, 1876.

not to be in-
jured.
May 30, 1876.

connected with the Chestnut-hill reservoir, or dig or carry away any of the sward, gravel, rock, stones, sand, turf or earth thereon, or commit any nuisance thereon.

Trees not to be
injured.
Ibid.

SECT. 7. No person shall climb any tree on the grounds connected with the Chestnut-hill reservoir, or tie any horse or other animal to any of said trees, or to any fence on said premises.

No bills to be
posted.
Ibid.

SECT. 8. No person shall post any bills, placards or advertisements within the grounds connected with the Chestnut-hill reservoir.

Penalty.
Ibid.

SECT. 9. Any person violating any of the provisions of this ordinance, shall be liable to a penalty of not less than five nor more than fifty dollars for each offence.

WEIGHTS AND MEASURES.¹

GENERAL STATUTES.

Appointment of
sealers of
weights and
measures.

1. The mayor and aldermen are authorized to appoint annually, in March or April, one sealer of weights and measures,² and as many more as the city council may determine; and they are also

¹ For provisions in relation to weighing hay, see "Hay and Hay Scales," p. 371; in relation to sealing milk cans, see "Milk," p. 532; in relation to verification of apparatus for linear measurements, see "Surveyors," p. 801; in relation to the measurement of leather, see "Leather," 508; in relation to meal and grain, see "Meal and Grain," p. 522; in relation to wood, bark, charcoal, bituminous and anthracite coal, see "Wood, Bark and Coal," p. 960.

² See note to page 18. It would appear that the aldermen alone had the appointment in this case.

authorized to appoint a gauger of liquid measures. And said mayor and aldermen are authorized to remove any sealer or gauger at any time they may see fit.

G. S. c. 18, § 37.
Removal.
1876, c. 123, § 9.

2. The sealers of weights and measures in the several cities and towns shall annually give public notice by advertisement, or by posting notice in one or more public places in their respective cities and towns, to all inhabitants or persons having a usual place of business therein, who use scales, weights, measures or milk-cans for the purpose of selling any goods, wares, merchandise or other commodities, or for public weighing, to bring in their scales, weights, measures and milk-cans to be adjusted and sealed within sixty days after said notice. Such sealers shall attend in one or more convenient place or places, and shall adjust, seal and record all scales, weights, measures and milk-cans, so brought in.

Sealers to give annual notice that weights, etc., be brought in to be adjusted.
Ibid. § 1.

In those cities or towns where a salary is paid to the sealers of weights and measures, no fees shall be charged for such services. In other cities and towns the said sealers shall receive the compensation set forth in section fourteen of chapter fifty-one of the General Statutes.

Compensation.

3. After the expiration of the said sixty days the said sealers of weights and measures shall go to the houses, stores and shops of persons mentioned in the foregoing section who have neglected to comply with the notice given thereunder, and having entered the same with the assent of the occupants thereof, shall adjust and seal their scales, weights, measures and milk-cans.

To adjust weights, etc., in stores when dealers fail to comply with notice.
Ibid. § 2.

4. The said sealers of weights and measures shall go once a year, and oftener if necessary, to every hay and coal scale, dormant or other platform balance, within their respective cities and towns, that cannot be easily or conveniently removed, and test the accuracy of, and adjust and seal the same.

To test hay and coal scales annually.
Ibid. § 3.

5. All persons using any scales, weights, measures or milk-cans for the purpose of buying or selling any commodity, may have the same tested and sealed by the sealers of weights and measures, at the office of any of said sealers, whenever such persons desire to have it done.

To adjust weights at office whenever required.
Ibid. § 4.

6. Whenever a complaint is made to a sealer of weights and measures by any person, that he has reasonable cause to believe,

To examine, etc., when complaint is made

that weights,
etc., are in-
correct.
1876, c. 123, § 5.

or whenever a sealer of weights and measures shall himself have reasonable cause to believe, that any scale, weight, measure or milk-can used in the sale of any commodity within the city or town, is incorrect, the said sealer shall go to the place where such scale, weight, measure or milk-can is, and test and mark the same according to the result of the test applied thereto; and if the same be incorrect and cannot be adjusted, the said sealer shall attach a notice thereto certifying the fact, and forbidding the use thereof until the same has been made to conform to the authorized standard. Any person using any scales, weights, measures or milk-cans after a sealer of weights and measures has demanded permission to test the same, and has been refused such permission, shall be liable to a penalty of not less than ten nor more than one hundred dollars.

Penalty.

Weights that
cannot be made
to conform to
standard to be
marked "Con-
demned."
Ibid. § 6.

7. All scales, weights, measures and milk-cans that cannot be made to conform to the standard, shall be stamped "Condemned" or "C. D." by the sealer of weights and measures; and no person shall thereafter use the same for weighing or measuring any commodity sold or exchanged, under the penalties provided in the case of the use of false weights and measures.

Penalty for
using false
weight or meas-
ure.
Ibid. § 7.

8. If any person shall knowingly use any false weight, measure, milk-can, scale, balance or beam, or shall alter any weight, measure, milk-can, scale, balance or beam, after the same shall have been adjusted and sealed, so that the same thereby shall not conform to the public standard, and shall fraudulently make use of the same, he shall forfeit for each offence the sum of fifty dollars, one-half to the use of the city or town, and one-half to the use of the complainant. And any sealer, when he shall have reasonable cause to believe that any weight, measure, milk-can, scale, balance or beam has been altered since the same was last adjusted and sealed, is authorized and required to enter the premises in which such weight, measure, milk-can, scale, balance or beam is kept or used, and examine the same.

Sealers of
weights may be
paid salaries.
Ibid. § 8.

9. The city council of any city may, by ordinance, and any town may by by-law, provide that the sealers of weights and measures for their respective city or town, be paid by a salary, and that they account for and pay into the treasury of the city or town the fees received by them by virtue of their office.

10. The weights, measures, and balances received from the United States, and now in the treasury of the commonwealth, to wit, one-half bushel, one wine gallon, one wine quart, one wine pint, one wine half pint, one yard measure; a set of avoirdupois weights, consisting of fifty, twenty-five, twenty, ten, five, four, three, two, and one pounds, and from eight ounces down to one drachm; one set of troy weights, from five thousand pennyweights down to half a grain, and from one pound down to the ten-thousandth part of an ounce; and three sets of balances; also the measures caused to be made by the treasurer and now in the treasury, to wit, one of eight quarts, one of four quarts, one of two quarts, and one of one quart, dry measure, shall be, remain, and be used, as the sole authorized public standards of weights and measures.¹

What weights, measures, and balances to be authorized standards.
G. S. c. 51, § 1.
U. S. Const. art. 1, § 8.

11. The treasurer shall furnish to each town hereafter incorporated, at a cost not exceeding one hundred and fifty dollars, a complete set of standard weights, measures, and balances, such as have been furnished to other towns, made to conform as near as practicable to the models caused to be made by the treasurer as town standards. The expense of transportation shall be defrayed by the town.

Treasurer to furnish towns with sets.
G. S. c. 51, § 4.

12. The several county, city, and town treasurers shall, at the expense of their respective counties, cities, and towns, provide therein places for the safe and suitable keeping and preservation of the weights, measures, and balances, furnished by the commonwealth, which shall be used only as standards. They shall have the care and oversight thereof; shall see that they are kept in good order and repair; and if any portion of them are lost, destroyed, or irreparably damaged, shall, at the expense of the county, city, or town, replace the same by similar weights, measures, or balances.

County, city, and town treasurers to provide for safe-keeping, etc.
Ibid. § 5.

13. Each treasurer who neglects to provide a suitable place for keeping such weights, measures and balances, or to keep them in good order and repair, or who suffers any of them through his

Penalty on treasurers for neglect.
Ibid. § 6.

¹ Gen. Sts. c. 51, §§ 2, 3, omitted in the text, make provision for the keeping and replacing of the standard weights and measures, and for the appointment by the treasurer of the commonwealth of a deputy, etc.

G. S. c. 51, § 6. neglect to be lost, damaged, or destroyed, shall forfeit two hundred dollars, to be recovered by indictment.

Treasurers to have standards proved.
Penalty.
Ibid. § 7.

14. Each treasurer shall once at least in every ten years have the standards in his custody tried, adjusted, and sealed by the treasurer of the commonwealth, or his deputy; the expense whereof shall be paid by the respective counties, cities, and towns. Every treasurer who neglects to have the standards under his charge so sealed shall forfeit a sum not exceeding fifty dollars.

Each town sealer to have set of standards.
Ibid. § 8.

15. When a city or town votes to have more than one sealer of weights and measures, the treasurer shall, at the expense thereof, procure and preserve the necessary additional seals, weights, and measures, before specified; so that each sealer may have a complete set of the same.

Sealers accountable to towns for preservation of standards.
Ibid. § 9.

16. Every sealer of weights and measures shall receive of the treasurer a set of the standards and seal, and shall give him a receipt therefor, expressing the condition in which the same are; and he shall be accountable to the city or town for the due preservation of the same in the like condition, until he re-delivers them to the treasurer.

Treasurers, deputies, and sealers, to have seal.
Form of.
Ibid. § 10.

17. The treasurer of the commonwealth and his deputy, the county treasurers, and the city and town sealers, shall each keep a seal for their several uses. The seals of the treasurer and of his deputy, shall be the letters *C. M.*, those of county treasurer shall be the initial and final letters of their respective counties, followed by the letters *Co.*; those of city and town sealers, the name of their respective cities or towns, or such intelligible abbreviation thereof as the mayor and aldermen, or selectmen, may prescribe.

Sealers not to remove standards.
Ibid. § 12.

18. No sealer, except for the purpose of testing hay scales, etc., platform balances, which cannot be readily removed, shall carry his standards of weights, measures, or scales, from one place to another, for the purpose of adjusting others.

Penalty for neglect.
Ibid. § 13.

19. For every neglect of any duty prescribed in sections two, four, sixteen and seventeen, the sealer shall forfeit a sum not exceeding twenty dollars.

Vibrating steel-yards allowed

20. The vibrating steelyards, which have been heretofore allowed and used in this state, may continue to be used: *provided*, that

each beam, and the poises thereof, shall be annually tried, proved, and sealed by a sealer of weights and measures, like other beams and weights.

to be used, if sealed.
G. S. c. 51, § 15.

21. Whoever sells by any other weights, measures, scales, beams, or balances than those which have been sealed as before provided, shall forfeit a sum not exceeding twenty dollars for each offence; and when, by the custom of trade, they are provided by the buyer, if he purchases by any other weights, measures, scales, beams, or balances, he shall be subject to a like penalty, to be recovered by an action of tort to the use of the complainant.¹

Penalty for using unsealed weights, etc.
Ibid. § 16.
106 Mass. 269.
109 Mass. 220.

22. When commodities are sold by the hundred weight, it shall be understood to mean the net weight of all packages from one to one hundred pounds avoirdupois; and all contracts concerning goods sold by weight shall be understood and construed accordingly.

"Hundred weight" to be construed the net hundred.
Ibid. § 17.

23. Every public weigher of goods or commodities shall weigh the same according to the provisions of the preceding section, and make his certificate accordingly; and for each refusal or neglect he shall forfeit a sum not exceeding ten dollars. Every weigher of goods appointed by a city or town, and every weigher for hire or reward, shall be deemed and taken to be a public weigher within the provisions of this section.

Rules for weighing.
Penalty for violation. Who to be deemed public weighers.
Ibid. § 18.

24. In every city and town in which section twenty-three of chapter thirty of the Revised Statutes has been adopted according to the provisions thereof, or in which the provisions of this section shall be accepted by the city council of the city, or by the inhabitants of the town at a legal meeting, every measure by which salt or grain is sold, in addition to being conformable in capacity and diameter to the public standards, shall have a bar of iron across the middle thereof at the top, to be approved by a sealer of weights and measures, and a bar or standard of iron from the centre of the first-mentioned bar to the centre of the bottom of the measure, to be approved in like manner; and every such measure shall be filled by shovelling such salt or grain into the same, and the striking thereof shall always be lengthwise of the first-described bar. And whoever sells, or exposes to sale, any salt or grain in any other measure, or fills or strikes such measure in any other

Provisions respecting measures for salt and grain.
Ibid. § 19.

¹ No action lies to recover the price of goods sold in violation of this section.
109 Mass. 220.

G. S. c. 51, § 19. manner than is provided in this section, shall forfeit fifty cents for every bushel of salt or grain so measured, filled, or stricken: *provided*, that salt may be measured from vessels in such measures as are used by the government of the United States, and that nothing contained in this section shall prevent the measuring of salt in tubs, or any proportional parts of hogsheads, without bars, as may be determined by any city or town.

Board of aldermen may appoint weighers of boilers, etc. 1863, c. 173, § 1.

25. The mayor and aldermen, or selectmen, of any city or town where boilers and heavy machinery are sold, shall appoint one or more persons, not engaged in the manufacture or sale thereof, to be weighers of boilers and heavy machinery, who shall be sworn to the faithful discharge of their duties, and shall receive such fees as may be ordered by the board appointing them, which shall be paid by the seller; and said weighers shall be removable at the pleasure of the appointing power.¹

SPECIAL STATUTES.

Sealer of weights and measures shall keep a house or office, where weights, measures, etc., shall be sent to be sealed. 1817, c. 50, § 1.

26. By the statute of eighteen hundred and seventeen, chapter fifty, it was provided that it shall be the duty of the sealer of weights and measures within and for the town of Boston, to be provided with a house, or office, and to which all persons using scale beams, steelyards, weights or measures within the town of Boston, in trade for the purpose of buying or selling any article, shall be required, after notice thereof shall have been given in two or more of the newspapers published within the said town, to send annually their scale beams, steelyards, weights, and measures, for the purpose of having the same tried, proved, and sealed, as provided in the act of seventeen hundred and ninety-nine, chapter sixty.

Sealer shall go to houses, stores, and shops of such as neglect to bring in weights, measures, etc.,

27. It was also provided by the same act, that the said sealer is authorized and required to go to the houses, stores, and shops of all such merchants, innholders, traders, retailers, and of all other persons living or residing within the said town of Boston, using beams, steelyards, weights or measures, for the purpose of buying

¹ By a vote of the mayor and aldermen, passed June 24, 1863, weighers of boilers and other heavy machinery are allowed to charge for their services, under the act of April 23, 1863, a sum not exceeding fifty cents per ton.

and selling, as shall neglect to bring or send the same to the house or office of the sealer aforesaid; and there, at the said houses, stores, and shops, on having entered the same with the assent of the occupant thereof, to try, prove, and seal the same, or to send the same to his said house or office to be tried, proved, and sealed, and shall be entitled to demand and receive therefor, double the fees he would be entitled to demand and receive for the same, if such beams, steelyards, weights and measures had been sent to his said house or office, and all expenses attending the removal and transportation of the same; and if any such person or persons shall refuse to have his, her, or their beams, steelyards, weights or measures so tried, proved, and sealed, the same not having been tried, proved, and sealed within one year preceding such refusal, he, she, or they, shall forfeit and pay ten dollars for each offence; the one moiety to the use of the said town of Boston, the other moiety of the same to the sealer. And if any such person or persons shall use any beam, steelyard, weight or measure which shall not conform to the public standard, the same not having been tried, proved, and sealed within one year preceding such use of the same, he, she, or they, shall forfeit and pay ten dollars for each offence; the one moiety to the use of said town of Boston, and the other moiety of the same to the informer. And if any such person or persons shall alter any beam, steelyard, weight or measure, after the same shall have been tried, proved, and sealed, so as that the same shall, by such alteration, be made not to conform to the public standard, and shall fraudently make use of the same, he, she, or they, shall forfeit and pay fifty dollars for each offence; the one moiety to the use of the said town of Boston, and the other moiety of the same to the informer.

and shall seal the same.

1817, c. 50, § 2.

Double fees and expenses.

Penalty for refusal to have

weights, meas-

ures, etc.

sealed.

Penalty for

using same

without sealing.

Penalty for al-

tering same.

ORDINANCE.¹

SECTION 1. The mayor, by and with the consent of the board of aldermen, may annually, in the

Sealers of

weights and

measures to be

appointed.

¹ An ordinance relating to the sealing of weights and measures, passed July 6, 1863; amended June 3, 1864, January 25, 1867, October 15, 1869, August 12, 1870 and May 9, 1874.

July 6, 1863.
Oct. 15, 1869.

month of March or April, appoint three sealers of weights and measures, who shall serve during one year, and until others are appointed and qualified in their stead, and shall have all the powers, and perform all the duties, prescribed in the laws of the commonwealth relative to the sealers of weights and measures.

Sealer to be paid
by salary.
July 6, 1863.

Bond.

SECT. 2. Each sealer of weights and measures shall receive, in full compensation for his services, such salary as the city council may from time to time determine, and shall give bond, with one or more sureties, to the approbation of the board of aldermen, in the sum of three thousand dollars, with condition that he shall faithfully perform all the duties of his office.

Sealers shall keep
book.
June 3, 1864.
Aug. 12, 1870.

SECT. 3. Each sealer of weights and measures shall keep a book, provided by the city, which shall be divided into nineteen columns, with subdivisions, in the following form, viz.:—

Date.	Name.	Place of business.	Kind of business.	Amount and kind of each sealed.										Number and kind adjusted.	Number and kind repaired.	Remarks.		
				Platform balance.	5,000 lbs. and upwards, Plat. bal.	Butchers' scale.	Spring scale.	Trip scale.	Counter balance.	Pub. Weighers' scale.	Balance.	Weights.	Dry Measure.	Wet Measure.	Yard sticks.			

And whenever he performs any duties by virtue of his office, he shall enter in said book, in the appropriate columns and subdivisions, all the particulars enumerated in said titles, and every such book shall be the property of the city of Boston, and shall be delivered by each sealer, at the expiration of office, to the city treasurer.

June 3, 1864.
Aug. 12, 1870.

SECT. 4. Each sealer shall, annually, on or before the tenth day of January, make a report to the city council containing a statement in detail of the expenses of his department during the preceding year, and the property under his charge belonging to the city.

Sealer shall report annually.
July 6, 1863.
Jan. 25, 1867.
Aug. 12, 1870.

SECT. 5. No sealer of weights and measures shall sell, be the agent for selling, or receive any commission on the sales of, scales, beams, balances, platform balances, weights or measures, or receive any commission for recommending the same, or upon any part of the charge for adjustment or repairs.

Sealer shall not be agent for selling scales.
July 6, 1863.

SECT. 6. The office of said sealers of weights and measures shall be in the city hall, or in such other building as the joint standing committee of the city council on public buildings may from time to time designate, and the committee on weights and measures shall provide transportation for their standards. Said sealers shall make no contracts involving the expenditure of money, without first having obtained the approval of the committee on weights and measures.

City shall provide transportation, etc.
Jan. 25, 1867.
May 9, 1874.

Assistant
allowed.
July 6, 1863.

SECT. 7. Whenever it may be necessary for the proper discharge of his duty, any sealer may be allowed an assistant, to be nominated by such sealer and appointed by the board of aldermen, and such assistant shall be paid such compensation as the city council shall determine.

WELLS AND PUMPS.

ORDINANCE.¹

Public wells to
be provided
with pumps.
Dec. 30, 1833.

Expense to be
assessed on per-
sons using the
same.

SECTION 1. It shall be the duty of the board of aldermen to keep all wells belonging to the city supplied with suitable pumps, and to keep the same in good order and repair; and to assess the cost of said pumps, and the expense of keeping them in repair, and also a reasonable charge for the use of the same, annually, upon the owners of real estate in the vicinity of such wells when the tenants thereof use the water from them; and where the land-owners are absent from the commonwealth, or are unknown, they shall assess their proportion of the same upon the occupants of such real estate, and this assessment shall be a charge on the estate.

Owner of estate
assessed, to pay
within ten days.
Ibid.

SECT. 2. The owner or tenant of such real estate, as the case may be, being assessed as aforesaid, shall pay the amount of such assessment in to the city collector within ten days from the time of the deliv-

¹ An ordinance for the repair and keeping in order the public wells and pumps, passed December 30, 1833.

ery of the notice so to do; and in case of neglect to pay said amount for the space of ten days, it shall be the duty of the city collector to prosecute for the same.

Dec. 30. 1833.

SECT. 3. If the said owner or tenant, being assessed as aforesaid, shall make it appear to the satisfaction of the board of aldermen, that he has, upon his own estate, a good and sufficient well of water, and that neither he, nor any tenant or occupant of his estate, has made any use of, or has any necessity to resort to, such public pump or well, in such case it shall be in the power of the board of aldermen to release such owner or tenant from the payment of such assessment: *provided, always*, that in such case, if it is afterwards made to appear that any tenant or occupant of such estate hath made use of said public well or pump, such owner or tenant shall be liable to pay double the amount of that, and of all other assessments, which may have been made upon such estate, if, from the circumstances of the case, the board of aldermen shall see fit to demand the same.

Owner of estate
to be released in
certain cases.
Ibid.

Proviso.

SECT. 4. Whoever shall break or otherwise injure any of the public pumps, or commit any trespass on the same, shall forfeit and pay a sum not less than one dollar, nor more than twenty dollars, to be recovered by complaint before the justices of the police court.

Penalty for in-
juring, etc., pub-
lic pumps.
Ibid.

WOOD, BARK, AND COAL.

STATUTES.

Cord wood, dimensions of.
G. S. c. 49, § 181.
2 Allen, 317.

1. Cord wood exposed for sale shall be either four, three, or two feet long, including half the kerf; and the wood, being well and close laid together, shall measure in quantity equal to a cord of eight feet in length, four in width, and four in height.¹

Penalty for selling wood, etc., not measured.
Ibid. § 182.
7 Cush. 371.
10 Gray, 89.

2. If any firewood or bark exposed to sale in a market, or upon a cart or other vehicle, is offered for sale before the same has been measured by a public measurer of wood and bark, and a ticket thereof signed by him delivered to the driver, certifying the quantity which the load contains, the name of the driver and the place in which he resides, the driver and owner shall, for each load thereof, severally forfeit the sum of five dollars.²

Fees.
Ibid. § 183.

3. The measurers of wood and bark in any place shall be entitled to such fees for their services as the mayor and aldermen or selectmen shall establish; and the fees shall in each case be paid to the measurer by the driver, and shall be repaid by the purchaser.

Wood brought by water, how measured.
Towns may make regulations, etc.
Ibid. § 184.

4. Cord wood brought by water into a place for sale and landed shall be measured by a public measurer; and for that purpose the wood shall be corded and piled by itself in ranges, making up in height what shall be wanting in length; and, being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service. But cities and towns may establish ordinances and regulations, with suitable penalties, for the inspection, survey, admeasurement, and sale of wood, coal, and bark for fuel, brought into such places for sale, and may also provide for the appointment of such surveyors, inspectors, and other officers, and establish their fees of office.

Carters to have tickets.
Ibid. § 185.

5. Each wharfinger, carter, or driver, who conveys any firewood or bark from a wharf or landing-place, shall be furnished by the owner or seller with a ticket certifying the quantity which the load

¹ This section does not prohibit the sale of a quantity of wood piled upon and by the side of the land where it grew, although not of either of the lengths specified. 2 Allen, 317.

² This section does not apply to the sale of bark lying upon the owners' land in the country. 7 Cush. 371.

contains, and the name of the driver; and if firewood or bark is thus conveyed without such ticket accompanying the same; or if a driver refuses to produce and show such ticket on demand to any sworn measurer, or to give his consent to have the same measured; or if such ticket certifies a greater quantity of wood or bark than the load contains, in the opinion of the measurer after measuring the same; the driver and owner shall, for each load thereof, forfeit the sum of five dollars. But nothing contained in this chapter shall be construed to extend to a person who transports, carts, or causes to be transported or carted, from a wharf or landing-place to his own dwelling-house or store, cord wood or bark which he has purchased on a wharf or landing-place, or has landed thereon upon his own account. G. S. c. 49, § 185. Proviso.

6. The city council of a city may establish ordinances and regulations, with suitable penalties, for the inspection, survey, ad-measurement, and sale of bark for fuel, or manufacturing purposes, brought into said city for sale, whether the same is exposed for sale in ranges, or upon a cart or other vehicle; and said city may provide for the appointment of such surveyors, inspectors and other officers, as may be necessary to carry into effect said ordinances, and may establish their fees: *provided*, that no penalty for any one violation shall exceed the sum of five dollars. Cities may regulate inspection and sale of bark. Ibid. § 186.

7. All anthracite, bituminous or mineral coal shall hereafter be sold by weight, and, except when sold by the cargo, two thousand pounds avoirdupois shall be the standard for the ton by which the same shall be weighed and sold. Coal to be sold by weight, two thousand pounds to the ton. 1870, c. 205, § 1. 5 Allen, 299.

8. The mayor and aldermen or selectmen of every place where such coal is sold shall appoint suitable persons, one or more of whom shall not be engaged in the business of selling coal, to be weighers of coal, who shall be sworn, and be removable at the pleasure of the board appointing them, and all coal shall be weighed by such sworn weighers. Coal to be weighed by sworn weighers. Ibid. § 2.

9. On or before the delivery of any such coal to a purchaser, the seller shall cause the same to be weighed by a sworn weigher of the place in which the same is sold or delivered, who shall keep a record thereof for the use of both parties, and a certificate of the weight thereof, signed by such weigher, when so requested, shall be delivered to the purchaser or his agent at the time of the delivery of the coal. Record to be kept, and certificates of weight to be given. Ibid. § 3.

Purchaser of five hundred pounds of coal may have it weighed by a sworn weigher other than the seller.
1870, c. 205, § 4.
5 Allen, 209.
Fees to be paid by purchaser.

10. When the purchaser of coal, in quantities of five hundred pounds or more, shall so request before the delivery thereof, the seller shall cause the same to be weighed by a sworn weigher, not the seller nor in his employ, and not engaged in the business of selling coal, and a certificate of the weight thereof shall be delivered, signed by such weigher, to the purchaser or his agent at the time of the delivery of the coal. The fees for such weighing to be paid by the purchaser.

Penalty for fraud by seller.
Ibid. § 5.

11. Any fraud or deceit in the weight of coal on the part of the seller, or those employed by him to sell, weigh or deliver the same, shall be punished by a fine of not less than twenty-five dollars, and not more than seventy-five dollars, for each offence.

Penalties.
Ibid. § 6.

12. Whoever violates any of the provisions of the first, second, third and fourth sections of this act, shall be punished by a fine of not less than twenty-five dollars, and not more than seventy-five dollars, for each offence.

Form and dimensions of charcoal measures.
G. S. c. 40, § 191.

13. In the sale of charcoal, the baskets, tubs, or vessels used in measuring the same, except as hereinafter provided, shall be of a cylindrical form, and of the following dimensions in the inside thereof, to wit: nineteen inches in diameter in every part, and eighteen inches and one-tenth of an inch in depth, measured from the highest part of the bottom thereof; each of which shall be deemed to be of the capacity of two bushels, and shall be filled level full; and every such vessel shall be sealed by a sealer of the place in which the person using the same shall usually reside or do business.

Dimensions of charcoal boxes, bins, or cans.
Ibid. § 192.

14. Charcoal may be measured in boxes, bins, or cans, of the following capacities, to wit: of five, ten, twenty, thirty, forty, or fifty bushels, such boxes, bins, or cans, being first lawfully sealed as aforesaid; and five thousand one hundred and thirty-two cubic inches shall be deemed equal to two bushels, or the level basket, tub, or vessel, described in the preceding section.

Penalty for having, etc., illegal measures.
Ibid. § 193.

15. Every vender of charcoal, who has in his possession any basket, tub, box, bin, vessel, or measure of less dimensions than those required by the two preceding sections, or not sealed as therein provided, with intent to use the same, or permit the same to be used for measuring charcoal, sold or agreed to be sold, shall forfeit ten dollars for every such measure in his possession. And

every person who measures in any such basket, vessel or measure, any charcoal sold or offered for sale, unless by special agreement of the buyer and seller, shall forfeit a sum not exceeding one dollar for every two bushels so measured or pretended to be measured, and such basket, vessel, or measure, shall be destroyed. G. S. c. 49, § 193.

16. The mayor and aldermen or selectmen of every place shall appoint one or more suitable persons to seize all baskets, vessels, or measures used or intended to be used for measuring charcoal, and not conforming to the foregoing provisions; and to arrest, without warrant, any person having in his possession such baskets, vessels, or measures, and take him and them before the proper tribunal for prosecution; and upon his being convicted or found guilty, such tribunal shall order said baskets, vessels, and measures to be destroyed. Persons to be appointed to seize illegal measures, etc., and arrest without warrant, etc. Ibid. § 194.

ORDINANCE.¹

SECTION 1. The board of aldermen may assign as many places for the measuring of wood and bark, brought into the city by land for sale, as they may deem expedient; and they may assign places for the sale of such wood and bark. Aldermen to assign places for measuring and sale of wood and bark. Oct. 31, 1850.

SECT. 2. Any person bringing wood and bark as aforesaid, into the city for sale, who shall, before or after the same has been duly measured, stand for the sale thereof in any other street or place than those appointed by the board of aldermen, shall forfeit and pay the sum of not less than two nor more than fifty dollars, for each offence. Penalty for standing in places not assigned, etc. Ibid.

SECT. 3. The mayor, by and with the advice and consent of the aldermen, may annually appoint as many measurers of such wood and bark as they may Measurers of wood and bark brought by land to be appointed by the mayor.

¹ An ordinance relating to the measuring of wood and bark, passed October 31, 1850.

Tenure of office.
Oct. 31, 1850.

deem expedient, who shall serve during the year, and until others are chosen and qualified in their stead, and who shall have all the powers, and perform all the duties, of measurers of such wood and bark, mentioned in the laws of the commonwealth.

Fees established by aldermen.
Ibid.

SECT. 4. Measurers of wood and bark shall be entitled to such fees for their services as the board of aldermen shall establish, to be paid according to law.

Measurers of wood and bark brought by water, appointed by the mayor, etc.
Ibid.

SECT. 5. The mayor, by and with the advice and consent of the aldermen, may annually appoint four or more measurers of wood and bark brought by water into the city for sale and landed, who shall serve during the year, and until others are appointed and qualified in their stead, and who shall be entitled to such fees as the board of aldermen shall establish, to be paid by the purchaser; and such measurers shall have all the powers, and perform all the duties, of measurers of wood and bark brought into the city by water for sale, mentioned in the laws of the commonwealth.

RULES AND REGULATIONS.¹

Fees for weighing coal.
July 17, 1865.

SECTION 1. The weighers of coal, appointed under chapter one hundred and ninety-one of the statutes of eighteen hundred and sixty-five, shall be entitled to receive the sum of five cents for each and every ton, or fraction of a ton (not less than five hundred

¹ Rules and regulations adopted by the board of aldermen, July 17, 1865, and June 6, 1866.

pounds), of coal weighed by them, and this fee shall July 17, 1865.
be in full for all their services, including the certificate of the weight thereof, and shall be paid by the seller. Said certificate shall contain the gross weight, the tare, and the number of the cart in which the same was weighed.

SECT. 2. From and after this date, the fees for the Fees for measuring wood and bark.
measurement of wood and bark, brought into the city June 6, 1866.
of Boston by land or water, shall be at the rate of
ten cents per cord.

CITY HALL REFERENCE LIBRARY.

ORDINANCE.¹

City Hall Reference
library.
Nov. 29, 1876.

SECTION 1. The joint standing committee of the city council on printing are hereby empowered to establish, in the city hall, a municipal library, to be designated the City Hall Reference Library; to have placed therein a copy of the several publications issued by the city, or any board or department thereof, and any copies of publications presented to the city of Boston from other sources; and they may purchase, or authorize the purchase, of other publications for the library, and they may remove or authorize the removal from the library and the disposal of any publications considered useless in the collection at any time; and they shall make all needful rules and regulations applicable to the library. The city messenger shall have the care of the library established as herein provided, subject to such rules and regulations respecting the same as the said committee may adopt; and all expenses incurred under the provisions of this ordinance shall be charged to the appropriation for printing.

¹ An ordinance in addition to an ordinance relating to printing. Passed, Nov. 29, 1876.

REVISED ORDINANCES.

ORDINANCE.

Be it ordained by the aldermen and common council of the city of Boston, in city council assembled, as follows:—

SECTION 1. All the ordinances printed and contained on the preceding pages of this book, having been codified, revised and printed under the direction of the joint standing committee on ordinances of the city council of the city of Boston, are hereby declared to be the ordinances of said city of Boston, and shall have the force thereof.

Adoption of revised ordinances.
Dec. 23, 1876.

SECT. 2. All other ordinances and parts of ordinances heretofore passed by the city council of said city are hereby repealed.

Repeal of former ordinances.
Ibid.

SECT. 3. The repeal in the preceding section shall not affect any act done, or any right accruing or accrued, or established, or any suit or proceeding had or commenced in any civil case before the time when such repeal shall take effect, nor any offence committed, nor any penalty or forfeiture incurred, nor any suit or prosecution pending at the time of such repeal, for any offence committed, or for the recovery of any penalty or forfeiture incurred, under

Repeal not to affect rights accrued, etc.
Ibid.

Former ordinances, etc., not to be revived.
Dec. 23, 1876.

any of the provisions so repealed; and in all cases where any provisions of the preceding ordinances are made to go into operation at any time hereafter, the corresponding provisions, if any, of the said repealed ordinances or orders shall continue in force until the said new provisions shall go into operation, subject, however, to any express regulations relating thereto which may be contained in the preceding ordinances; and all persons who, at the time when the said repeal shall take effect, shall hold any office under any of the ordinances or orders so repealed, shall continue to hold the same according to the tenure thereof, except those offices which may have been abolished, and those as to which a different provision shall have been made by the preceding ordinances; and no ordinance or order, or part of an ordinance or order, which has been heretofore repealed, shall be revived by the repeal, in the preceding section, of any of the ordinances or orders or parts of ordinances or orders therein mentioned.

IN BOARD OF ALDERMEN, Dec. 11, 1876.

Passed: sent down for concurrence.

JOHN T. CLARK,
Chairman.

IN COMMON COUNCIL, Dec. 21, 1876.

Concurred.

J. Q. A. BRACKETT,
President.

Approved Dec. 23, 1876.

SAMUEL C. COBB,
Mayor.

RULES AND REGULATIONS.

ORDER.

SECTION 1. *Ordered*, That all the rules and regulations of the board of aldermen of the city of Boston, printed and contained in the book described in the first section of the preceding ordinance, entitled the "Revised Ordinances," be, and they are hereby declared to be, the rules and regulations of the board of aldermen of said city of Boston, and shall have the force thereof.

Adoption of
rules and regu-
lations, etc.
Dec. 11, 1876.

SECT. 2. All other rules and regulations, and all orders and parts of all rules and regulations and orders heretofore passed by the board of aldermen, inconsistent with the rules and regulations described in the preceding section, shall be, and the same are hereby, repealed.

Former rules and
regulations, etc.,
repealed.
Ibid.

SECT. 3. The repeal of the rules and regulations and orders, and parts of rules and regulations and orders, as provided for in the next preceding section, shall be subject to all the conditions, limitations and restrictions, so far as they are applicable, described and set forth in the third section of the ordinance, entitled the "Revised Ordinances," mentioned in the first section of this order.

Repeal of
former regula-
tions, etc.,
limited.
Ibid.

IN BOARD OF ALDERMEN, Dec. 11, 1876.

Passed.

Attest:

S. F. McCLEARY,

City Clerk.

ADDENDUM.

AN ORDINANCE

*In relation to contracts involving the employment of laborers.*¹

Laborers under
contracts to be
protected.
Dec. 28, 1876.

SECTION 1. In every contract entered into on behalf of the city, and involving the employment of mechanics or laborers by the contractor, a provision shall be inserted to the effect that the committee, board or other authority making such contract may, if it deems it expedient to do so, retain out of any amounts due to such contractor sums sufficient to cover any unpaid claims of mechanics or laborers for work or labor performed under such contract; *provided*, that notice in writing of such claims, signed by the claimants, shall have been previously filed in the office of the city clerk.

¹ This ordinance was passed December 28, 1876, after the passage of the ordinance enacting the revised ordinances.

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